

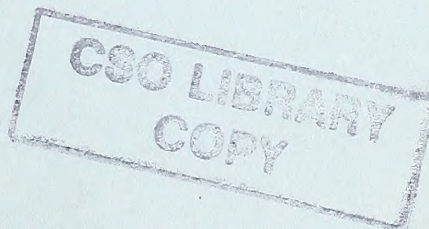
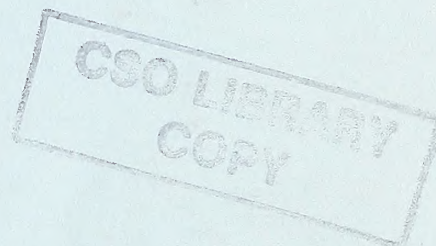


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JANUARY-DECEMBER-1981

UNITED STATES DEPARTMENT OF THE INTERIOR
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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C. 20240

Secretary of the Interior -- James G. Watt

Office of Hearings and Appeals -- James A. Limb, Director

Office of the Solicitor -- William H. Coldiron, Solicitor

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This index-digest covers all published and important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 30, 1981, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, VA 22203, and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

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TABLE OF CONTENTS

	<u>Page</u>
Topical Index to Decisions & Opinions-----	III
Symbols Used in Decisions & Opinions and Editor's Note-----	XXI
Table of Decisions Reported-----	XXIII
Table of Opinions Reported-----	LI
Table of Overruled & Modified Cases-----	LIII
Table of Suits for Judicial Review of Published & Unpublished Decisions-----	LIX
Cumulative Index to Suits for Judicial Review of Departmental Decisions-----	LXXIII
Table of Statutes Cited:	
(A) United States Statutes (Acts of Congress)-----	CXVII
(B) Revised Statutes -----	CXXII
(C) United States Codes-----	CXXIII
Index-Digest-----	1

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TOPICAL INDEX TO DECISIONS AND OPINIONS
OF THE DEPARTMENT OF THE INTERIOR

	<u>Page(s)</u>
ACCOUNTS -----	1-2
(See also Fees, Funds, Payments--if included in this Index.)	
GENERALLY -----	1
FEES AND COMMISSIONS -----	1
PAYMENTS -----	1-2
REFUNDS -----	2
ACQUIRED LANDS -----	2
ACT OF FEBRUARY 8, 1887 -----	2-3
ACT OF AUGUST 4, 1892 -----	3
ACT OF MARCH 3, 1909 -----	3
ACT OF JUNE 22, 1910 -----	3-4
ACT OF JUNE 25, 1910 -----	4
ACT OF JULY 17, 1914 -----	4
ACT OF MAY 21, 1930 -----	4
ACT OF AUGUST 11, 1955 -----	4
ACT OF SEPTEMBER 3, 1964 -----	4
ACT OF SEPTEMBER 26, 1968 -----	4
ACT OF DECEMBER 24, 1970 -----	4
ADMINISTRATIVE AUTHORITY -----	4-6
(See also Delegation of Authority, Federal Employees & Officers, Secretary of the Interior--if included in this Index.)	
GENERALLY -----	4-6
ESTOPPEL -----	6
LACHES -----	6
ADMINISTRATIVE PRACTICE -----	6-7
ADMINISTRATIVE PROCEDURE -----	7-15
(See also Appeals, Confidential Information, Contests & Protests, Hearings, Judicial Review, Public Records, Regulations, Rules of Practice--if included in this Index.)	
GENERALLY -----	7-8
ADJUDICATION -----	8-9
ADMINISTRATIVE LAW JUDGES -----	9
ADMINISTRATIVE REVIEW -----	9-10
BURDEN OF PROOF -----	10-12
DECISIONS -----	12
HEARINGS -----	12-15
RULEMAKING -----	15
SUBSTANTIAL EVIDENCE -----	15
AGENCY -----	15
AIRPORTS -----	15

	<u>Page(s)</u>
ALASKA -----	15-19
GENERALLY -----	15-16
HOMESITES -----	16
HOMESTEADS -----	16
NATIVE ALLOTMENTS -----	16-18
NAVIGABLE WATERS -----	18
Generally -----	18
OIL AND GAS LEASES -----	18-19
POSSESSORY RIGHTS -----	19
STATEHOOD ACT -----	19
TRADE AND MANUFACTURING SITES -----	19
ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT -----	19
GENERALLY -----	19
ALASKA NATIVE CLAIMS SETTLEMENT ACT -----	19-29
ABORIGINAL CLAIMS -----	19
ADMINISTRATIVE PROCEDURE -----	19-21
Generally -----	19-20
Applications -----	20
Conveyances -----	20
Decision to Issue Conveyance -----	20
Publication -----	21
ALASKA NATIVE CLAIMS APPEAL BOARD -----	21-25
Appeals -----	21-25
Generally -----	21
Decisions -----	21
Dismissal -----	22-23
Jurisdiction -----	23-24
Remand -----	24
Settlement Approval -----	24
Standing -----	24-25
CONVEYANCES -----	25-26
Generally -----	25
Easements -----	26
Valid Existing Rights -----	26
Generally -----	26
Third-Party Interests -----	26
DEFINITIONS -----	27
Public Lands -----	27
Generally -----	27
DISENROLLMENT -----	27
Metlakatla Natives -----	27
EASEMENTS -----	27-28
Access -----	27
Decision to Reserve -----	27
Procedures -----	28
Conformance -----	28
Public Easements -----	28
ENROLLMENT -----	28-29

Topical Index

	<u>Page(s)</u>
ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued	
NATIVE LAND SELECTIONS -----	-29
Regional Selections -----	-29
Generally -----	-29
Allocations -----	-29
Selection Limitations -----	-29
NAVIGABLE WATERS -----	-29
WITHDRAWALS AND RESERVATIONS -----	-29
Withdrawals for Native Selection -----	-29
Generally -----	-29
APPEALS -----	-30-32
(See also Administrative Procedure, Contracts, Grazing Permits & Licenses, Indian Probate, Indian Tribes, Rules of Practice, Torts, Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970--if included in this Index.)	
APPLICATIONS AND ENTRIES -----	-32-33
GENERALLY -----	-32
FILING -----	-32-33
VALID EXISTING RIGHTS -----	-33
VESTED RIGHTS -----	-33
APPRAISALS -----	-33-34
ATTORNEYS -----	-34
BALD EAGLE PROTECTION ACT -----	-34
BUREAU OF INDIAN AFFAIRS -----	-34
(See also Indian Probate--if included in this Index.)	
GENERALLY -----	-34
ADMINISTRATIVE APPEALS -----	-34
Generally -----	-34
Filing -----	-34
Mandatory Time Limit -----	-34
BUREAU OF LAND MANAGEMENT -----	-35
(See also Mineral Leasing Act--if included in this Index.)	
BUREAU OF RECLAMATION -----	-35
(See also Irrigation Claims--if included in this Index.)	
GENERALLY -----	-35
CLASSIFICATION AND MULTIPLE USE ACT OF 1964 -----	-35
COAL LEASES AND PERMITS -----	-35-37
(See also Mineral Leasing Act--if included in this Index.)	
GENERALLY -----	-35-36
CANCELLATION -----	-36
DILIGENCE -----	-36
LEASES -----	-36
PERMITS -----	-36-37
Generally -----	-36-37
READJUSTMENT -----	-37
RENTALS -----	-37
ROYALTIES -----	-37

	<u>Page(s)</u>
COLOR OR CLAIM OF TITLE -----	37-39
GENERALLY -----	37-38
ADVERSE POSSESSION -----	38
APPLICATIONS -----	38-39
CULTIVATION -----	39
DESCRIPTION OF LAND -----	39
GOOD FAITH -----	39
IMPROVEMENTS -----	39
COMMUNICATION SITES -----	39-40
CONSTITUTIONAL LAW -----	40-41
GENERALLY -----	40
DUE PROCESS -----	40-41
CONTESTS AND PROTESTS -----	41
(See also Administrative Procedure, Rules of Practice--if included in this Index.)	
GENERALLY -----	41
CONTRACTS -----	41-52
(See also Appeals, Claims Against the United States, Delegation of Authority, Labor, Rules of Practice-- if included in this Index.)	
GENERALLY -----	41
CONSTRUCTION AND OPERATION -----	41-48
Generally -----	41
Actions of Parties -----	42
Allowable Costs -----	42
Changed Conditions (Differing Site Conditions) -----	42-43
Changes and Extras -----	43-44
Construction Against Drafter -----	44
Contract Clauses -----	44
Contracting Officer -----	45
Differing Site Conditions (Changed Conditions) -----	45-46
Drawings and Specifications -----	46
Duty to Inquire -----	46
Estimated Quantities -----	46
General Rules of Construction -----	46-47
Intent of Parties -----	47
Modification of Contracts -----	47
Generally -----	47
Duress -----	47
Notices -----	47
Payments -----	48
Subcontractors and Suppliers -----	48
CONTRACT DISPUTES ACT OF 1978 -----	48
Interest -----	48
Jurisdiction -----	48
DISPUTES AND REMEDIES -----	48-51
Burden of Proof -----	48-49

Topical Index

Page(s)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages -----	49
Generally -----	49
Actual Damages -----	49
Measurement -----	49
Equitable Adjustments -----	49-50
Jurisdiction -----	50
Substantial Evidence -----	50-51
Termination for Default -----	51
Generally -----	51
FORMATION AND VALIDITY -----	51-52
Authority to Make -----	51
Fixed-price Contracts -----	51
Formalities -----	51
Governing Law -----	51-52
Implied and Constructive Contracts -----	51
PERFORMANCE OR DEFAULT -----	52
Acceptance of Performance -----	52
Breach -----	52
Excusable Delays -----	52
Waiver and Estoppel -----	52
CONVEYANCES -----	52
GENERALLY -----	52
DELEGATION OF AUTHORITY -----	53
(See also Administrative Authority, Contracts--if included in this Index.)	
EXTENT OF -----	53
DESERT LAND ENTRY -----	53
APPLICATIONS -----	53
CULTIVATION AND RECLAMATION -----	53
LANDS SUBJECT TO -----	53
WATER RIGHT -----	53
WATER SUPPLY -----	53
EMINENT DOMAIN -----	53
(See also Irrigation Claims--if included in this Index.)	
ENDANGERED SPECIES ACT OF 1973 -----	53-54
SECTION 7 -----	53-54
Consultation -----	53-54
Critical Habitat -----	54
ENVIRONMENTAL POLICY ACT -----	54
(See also National Environmental Policy Act of 1969--if included in this Index.)	
ENVIRONMENTAL QUALITY -----	54
(See also Water Pollution Control--if included in this Index.)	
GENERALLY -----	54
ENVIRONMENTAL STATEMENTS -----	54

	<u>Page(s)</u>
EQUITABLE ADJUDICATION -----	55
GENERALLY -----	55
SUBSTANTIAL COMPLIANCE -----	55
ESTOPPEL -----	55-57
EVIDENCE -----	57-61
GENERALLY -----	57-58
BURDEN OF PROOF -----	58-59
CREDIBILITY -----	59
CREDIBILITY OF WITNESSES -----	59
PRESUMPTIONS -----	59-60
SUFFICIENCY -----	60-61
WEIGHT -----	61
EXCHANGES OF LAND -----	61
(See also Indian Lands, Private Exchanges, State Exchanges, Wildlife Refuges & Projects-- if included in this Index.)	
GENERALLY -----	61
FEDERAL EMPLOYEES AND OFFICERS -----	61-63
(See also Administrative Authority, Claims Against the United States, Officers & Employees--if included in this Index.)	
GENERALLY -----	61-62
AUTHORITY TO BIND GOVERNMENT -----	62-63
FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT OF 1977 -----	63
DISTINCTION BETWEEN COOPERATIVE AGREEMENTS AND GRANTS -----	63
SELECTION OF INSTRUMENT -----	63
USE OF A CONTRACT -----	63
FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 -----	63-92
(See also Hearings--if included in this Index.)	
GENERALLY -----	63-64
ACQUISITIONS -----	64
ASSESSMENT WORK -----	64-66
CALIFORNIA DESERT CONSERVATION AREA -----	66
CORRECTION OF CONVEYANCE DOCUMENTS -----	66
DISCLAIMERS OF INTEREST -----	66
EXCHANGES -----	66
HEARINGS -----	66-67
INVENTORY AND IDENTIFICATION -----	67
LAND USE PLANNING -----	67
LEASES -----	67
PERMITS -----	67
RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM -----	68-77
RECORDATION OF MINING CLAIMS AND ABANDONMENT -----	77-87
REPEALERS -----	87
RESERVATION AND CONVEYANCE OF MINERAL INTERESTS -----	87
RIGHTS-OF-WAY -----	87-89

Topical Index

Page(s)

FEDERAL LAND POLICY & MANAGEMENT ACT OF 1976--Continued

RULES AND REGULATIONS	89
SALES	89
SERVICE CHARGES	89
WILD AND FREE-ROAMING HORSES AND BURROS	89
WILDERNESS	89-92
WITHDRAWALS	92
FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT	92
(See also Surplus Property--if included in this Index.)	
FEES	92
(See also Accounts--if included in this Index.)	
FREEDOM OF INFORMATION ACT (Act of June 5, 1967)	92
GEOLOGICAL SURVEY	93
GEOHERMAL LEASES	93-94
(See also Hearings, Mineral Leasing Act--if included in this Index.)	
DISCRETION TO LEASE	93
LANDS SUBJECT TO	93
REINSTATEMENT	93
RENTALS	93
STIPULATIONS	93
TERMINATION	94
GEOHERMAL RESOURCES	94
GRAZING LEASES	94
(See also Taylor Grazing Act--if included in this Index.)	
APPLICATIONS	94
PREFERENCE RIGHT APPLICANTS	94
GRAZING PERMITS AND LICENSES	94-95
(See also Appeals, Hearings, Taylor Grazing Act--if included in this Index.)	
GENERALLY	94
ADJUDICATION	94
APPEALS	94-95
CANCELLATION OR REDUCTION	95
HEARINGS	95
TRESPASS	95
HEARINGS	95-97
(See also Administrative Procedure, Federal Land Policy & Management Act of 1976, Geothermal Leases, Grazing Permits & Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act, Water Pollution Control--if included in this Index.)	
HOMESTEADS (ORDINARY)	97
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldiers' Additional Homesteads, Stock-Raising Homesteads--if included in this Index.)	
LANDS SUBJECT TO	97

Topical Index

	<u>Page(s)</u>
INDIAN ALLOTMENTS ON PUBLIC DOMAIN -----	97-99
GENERALLY -----	97
LANDS SUBJECT TO -----	97-99
INDIAN LANDS -----	99-100
(See also Exchanges of Land, Indian Probate, Rights-of-Way--if included in this Index.)	
GENERALLY -----	99
ALLOTMENTS -----	99
Alienation -----	99
CONTRACTS -----	99
Formation and Validity -----	99
Generally -----	99
GRAZING -----	99
Rental Rates -----	99
LEASES AND PERMITS -----	99
Minerals -----	99
Oil and Gas -----	99-100
Revocation or Cancellation -----	100
MINING LEASES -----	100
Generally -----	100
OIL AND GAS -----	100
Generally -----	100
PATENT IN FEE -----	100
Jurisdiction -----	100
TRIBAL LANDS -----	100
TRIBAL RIGHTS IN ALLOTTED LANDS -----	100
INDIAN PROBATE -----	101-104
(See also Appeals, Bureau of Indian Affairs, Hearings, Indian Lands, Indian Tribes, Rules of Practice--if included in this Index.)	
ADOPTION (See also CHILDREN, ADOPTED--if included in this Index.) -----	101
Generally -----	101
Crow Tribe -----	101
ATTORNEYS AT LAW -----	101
Fees -----	101
CHILDREN, ILLEGITIMATE (See also INHERITING--if included in this Index.) -----	101
Right to Inherit -----	101
Child from Father -----	101
DIVORCE (See also CLAIM AGAINST ESTATE--if included in this Index.) -----	101
Indian Custom -----	101
EVIDENCE -----	101
Insufficiency of -----	101
INDIAN REORGANIZATION ACT of June 18, 1934 (Wheeler-Howard Act) (25 U.S.C. §§ 464-486) -----	101-102
Construction of Section 4 -----	101-102

Topical Index

Page(s)

INDIAN PROBATE--Continued

KLAMATH TRIBE -----	102
MARRIAGE -----	102
Generally -----	102
Common Law and Indian Custom Distinguished -----	102
REHEARING (See also ADMINISTRATIVE PROCEDURE, HEARING-if included in this Index.) -----	102
Generally -----	102
REOPENING -----	102-103
Generally -----	102
Standing to Petition for Reopening -----	102
Waiver of Time Limitation -----	103
TRIBAL PURCHASE OF INTEREST IN DECEDENT'S ESTATE -----	103
WILLS (See also CONTRACT TO MAKE WILL, INHERITING-if included in this Index.) -----	103-104
Children, Disinheritance of -----	103
Construction of -----	103
Disapproval of Will -----	103
Failure to Mention Child -----	103
Mistake of Fact or Law -----	103
Testamentary Capacity -----	103-104
Generally -----	103-104
Alcohol -----	104
Witnesses' Testimony -----	104
Undue Influence -----	104
Unnatural Will -----	104
INDIAN TRIBES -----	104-105
(See also Appeals, Indian Probate--if included in this Index.)	
GENERALLY -----	104
ALASKAN GROUPS -----	104-105
FEDERAL RECOGNITION -----	105
HUNTING AND FISHING -----	105
Generally -----	105
JUDGMENT FUNDS -----	105
SOVEREIGN POWERS -----	105
INDIANS -----	105-106
CIVIL JURISDICTION -----	105
DOMESTIC RELATIONS -----	105
LAW AND ORDER -----	106
LACHES -----	106
LOWER COLORADO RIVER LAND USE -----	106
MILLSITES -----	106-107
(See also Mining Claims--if included in this Index.)	
GENERALLY -----	106
DEPENDENT -----	106-107
DETERMINATION OF VALIDITY -----	107

	<u>Page(s)</u>
MINERAL LANDS -----	107-108
DETERMINATION OF CHARACTER OF -----	107
LEASES -----	107
MINERAL RESERVATION -----	107-108
PROSPECTING PERMITS -----	108
MINERAL LEASING ACT -----	108-109
(See also Bureau of Land Management, Coal Leases & Permits, Geothermal Leases, Oil & Gas Leases, Phosphate Leases & Permits, Potassium Leases & Permits, Sodium Leases & Permits--if included in this Index.)	
GENERALLY -----	108
APPLICABILITY -----	108-109
LANDS SUBJECT TO -----	109
METHODS OF DEVELOPMENT -----	109
ROYALTIES -----	109
MINERAL LEASING ACT FOR ACQUIRED LANDS -----	109-110
GENERALLY -----	109
CONSENT OF AGENCY -----	109-110
LANDS SUBJECT TO -----	110
MINING CLAIMS -----	110-157
(See also Hearings, Millsites, Multiple Mineral Development Act, Surface Resources Act--if included in this Index.)	
GENERALLY -----	110-111
ABANDONMENT -----	111-120
ASSESSMENT WORK -----	120-126
COMMON VARIETIES OF MINERALS -----	126-127
Generally -----	126
Special Value -----	127
Unique Property -----	127
CONTESTS -----	127-129
DETERMINATION OF VALIDITY -----	129-132
DISCOVERY -----	132-137
Generally -----	132-135
Geologic Inference -----	136
Marketability -----	136-137
EXCESS RESERVES -----	137
HEARINGS -----	137-138
LANDS SUBJECT TO -----	138-139
LOCATION -----	140-141
LODE CLAIMS -----	141-142
MILLSITES -----	142
MINERAL LANDS -----	142-143
PATENT -----	143
PLACER CLAIMS -----	143
POSSESSORY RIGHT -----	143-144
POWERSITE LANDS -----	144
RECORDATION -----	144-154

Topical Index

Page(s)

MINING CLAIMS--Continued

RELOCATION -----	155
SPECIAL ACTS -----	155
SURFACE USES -----	155
TITLE -----	155
TUNNEL SITES -----	155
WITHDRAWN LAND -----	155-157
MINING CLAIMS RIGHTS RESTORATION ACT -----	158
MISTAKES -----	158
MULTIPLE MINERAL DEVELOPMENT ACT -----	158
(See also Hearings, Mining Claims--if included in this Index.)	
GENERALLY -----	158
NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 -----	158-159
(See also Environmental Policy Act--if included in this Index.)	
ENVIRONMENTAL STATEMENTS -----	158-159
NATIONAL PARK SERVICE -----	159
NATIONAL PARK SERVICE AREAS -----	159
GENERALLY -----	159
NOTICE -----	159-161
GENERALLY -----	159-161
CONSTRUCTIVE NOTICE -----	161
OFFICERS AND EMPLOYEES -----	161
(See also Federal Employees & Officers--if included in this Index.)	
OIL AND GAS LEASES -----	161-212
(See also Mineral Leasing Act, Outer Continental Shelf Lands Act--if included in this Index.)	
GENERALLY -----	161-162
ACQUIRED LANDS LEASES -----	162-163
ACREAGE LIMITATIONS -----	163
APPLICATIONS -----	163-182
Generally -----	163-169
Amendments -----	169
Attorneys-in-Fact or Agents -----	169-171
Description -----	171
Drawings -----	171-176
Filing -----	176-179
Reinstatement -----	179
640-acre Limitation -----	179
Sole Party in Interest -----	179-182
ASSIGNMENTS OR TRANSFERS -----	182-183
BONA FIDE PURCHASER -----	183-185
BONDS -----	185
CANCELLATION -----	185-186
COMMUNITIZATION AGREEMENTS -----	186
COMPETITIVE LEASES -----	186-187
CONSENT OF AGENCY -----	187
CONTRACTS FOR SALE OF ROYALTY OIL OR GAS -----	187-188

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND -----	188
DISCOVERY -----	188
DISCRETION TO LEASE -----	188-190
DRILLING -----	190
EXTENSIONS -----	190
FIRST-QUALIFIED APPLICANT -----	190-193
FUTURE AND FRACTIONAL INTEREST LEASES -----	193-194
KNOWN GEOLOGIC STRUCTURE -----	194-195
LANDS SUBJECT TO -----	195-197
NONCOMPETITIVE LEASES -----	197-198
OPERATING AGREEMENTS -----	198
OVERRIDING ROYALTIES -----	198-199
PRODUCTION -----	199
REINSTATEMENT -----	199-203
RENTALS -----	203-206
RIGHTS-OF-WAY LEASES -----	206
ROYALTIES -----	206
STIPULATIONS -----	206-207
SUBSURFACE STORAGE -----	207
SUSPENSIONS -----	207
TERMINATION -----	208-211
UNIT AND COOPERATIVE AGREEMENTS -----	211-212
WELL CAPABLE OF PRODUCTION -----	212
OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS	
BAY GRANT LANDS -----	212
GENERALLY -----	212
OUTER CONTINENTAL SHELF LANDS ACT -----	212-214
(See also Oil & Gas Leases--if included in this Index.)	
GENERALLY -----	212-213
OIL AND GAS INFORMATION PROGRAM -----	213
Generally -----	213
OIL AND GAS LEASES -----	213
REFUNDS -----	213-214
UNIT PLANS -----	214
PATENTS OF PUBLIC LANDS -----	214-215
GENERALLY -----	214
AMENDMENTS -----	214
EFFECT -----	214-215
RESERVATIONS -----	215
PAYMENTS -----	215
(See also Accounts--if included in this Index.)	
GENERALLY -----	215
PHOSPHATE LEASES AND PERMITS -----	215-216
(See also Mineral Leasing Act--if included in this Index.)	
PERMITS -----	215-216
POWERSITE LANDS -----	216

Topical Index

	<u>Page(s)</u>
PRACTICE BEFORE THE DEPARTMENT -----	216
(See also Rules of Practice--if included in this Index.)	
PERSONS QUALIFIED TO PRACTICE -----	216
PRIVATE EXCHANGES -----	216
(See also Exchanges of Land--if included in this Index.)	
GENERALLY -----	216
PUBLIC LANDS -----	216-217
(See also Accretion, Avulsion, Boundaries, Reliction, Surveys of Public Lands--if included in this Index.)	
GENERALLY -----	216
ADMINISTRATION -----	216-217
LEASES AND PERMITS -----	217
SPECIAL USE PERMITS -----	217
PUBLIC RECORDS -----	217
(See also Administrative Procedure, Confidential Information--if included in this Index.)	
PUBLIC SALES -----	218
APPLICATIONS -----	218
PREFERENCE RIGHTS -----	218
RAILROAD GRANT LANDS -----	218
RECLAMATION LANDS -----	218
(See also Irrigation Claims, Rights-of- Way--if included in this Index.)	
GENERALLY -----	218
RECREATION AND PUBLIC PURPOSES ACT -----	218
REGULATIONS -----	218-222
(See also Administrative Procedure-if included in this Index.)	
GENERALLY -----	218-220
APPLICABILITY -----	220-221
FORCE AND EFFECT AS LAW -----	221
INTERPRETATION -----	221
VALIDITY -----	222
WAIVER -----	222
RENT -----	222
RES JUDICATA -----	222
RIGHTS-OF-WAY -----	222-225
(See also Indian Lands, Reclamation Lands--if included in this Index.)	
GENERALLY -----	222
ACT OF MARCH 4, 1911 -----	222-223
ACT OF FEBRUARY 25, 1920 -----	223
APPLICATIONS -----	223-224
CANCELLATION -----	224
CONDITIONS AND LIMITATIONS -----	224
FEDERAL HIGHWAY ACT -----	224
FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 -----	224
NATURE OF INTEREST GRANTED -----	225
REVISED STATUTES SEC. 2477 -----	225

	<u>Page(s)</u>
RULES OF PRACTICE -----	225-235
(See also Administrative Procedure, Appeals, Contests & Protests, Contracts, Hearings, Indian Probate, Practice Before the Department--if included in this Index.)	
GENERALLY -----	225-226
APPEALS -----	226-231
Generally -----	226-227
Burden of Proof -----	227-228
Dismissal -----	228
Effect of -----	228-229
Failure to Appeal -----	229
Hearings -----	229
Motions -----	229-230
Notice of Appeal -----	230
Reconsideration -----	230
Standing to Appeal -----	230
Statement of Reasons -----	230-231
Timely Filing -----	231
EVIDENCE -----	231-232
GOVERNMENT CONTESTS -----	232-233
HEARINGS -----	233-235
PROTESTS -----	235
WITNESSES -----	235
SECRETARY OF THE INTERIOR -----	235-236
(See also Administrative Authority--if included in this Index.)	
SEGREGATION -----	236
SMALL TRACT ACT -----	236
APPRAISALS -----	236
SODIUM LEASES AND PERMITS -----	237
(See also Mineral Leasing Act--if included in this Index.)	
ROYALTIES -----	237
SPECIAL USE PERMITS -----	237
STATE EXCHANGES -----	237
(See also Exchanges of Land--if included in this Index.)	
GENERALLY -----	237
EFFECT OF APPLICATION -----	237
STATE SELECTIONS -----	238
(See also School Lands, Swamplands--if included in this Index.)	
STATUTES -----	238-239
STATUTORY CONSTRUCTION -----	239
ADMINISTRATIVE CONSTRUCTION -----	239
LEGISLATIVE HISTORY -----	239
STOCK-RAISING HOMESTEADS -----	240
(See also Homesteads (Ordinary)--if included in this Index.)	
SUBMERGED LANDS -----	240

Topical Index

	<u>Page(s)</u>
SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 -----	240-249
ABATEMENT -----	240
Generally -----	240
Remedial Actions -----	240
ADMINISTRATIVE PROCEDURE -----	240-241
Generally -----	240-241
Burden of Proof -----	241
APPEALS -----	241
Generally -----	241
APPLICABILITY -----	241-242
Generally -----	241
Initial Regulatory Program -----	241-242
APPROXIMATE ORIGINAL CONTOUR -----	242
Generally -----	242
ATTORNEYS' FEES/COSTS AND EXPENSES -----	242
Bad Faith/Harassment -----	242
Final Order -----	242
Standards for Award -----	242
Substantial Contribution -----	242
BACKFILLING AND GRADING REQUIREMENTS -----	242
Generally -----	242
Highwall Elimination -----	242
Previously Mined Lands -----	242
BONDS -----	242
Release of -----	242
CESSATION ORDERS -----	243
Generally -----	243
CIVIL PENALTIES -----	243
Generally -----	243
Amount -----	243
Hearings Procedure -----	243
ENFORCEMENT PROCEDURES -----	243-244
Generally -----	243-244
ENVIRONMENTAL HARM -----	244
Generally -----	244
EVIDENCE -----	244
Generally -----	244
HEARINGS -----	244
Procedure -----	244
HYDROLOGIC SYSTEM PROTECTION -----	245
Generally -----	245
IMPOUNDMENTS -----	245
Generally -----	245
INITIAL REGULATORY PROGRAM -----	245
Generally -----	245
INSPECTIONS -----	245
Generally -----	245

SURFACE MINING CONTROL & RECLAMATION ACT OF 1976--Continued

NOTICES OF VIOLATION -----	245-246
Generally -----	245-246
Permittees -----	246
Remedial Actions -----	246
PRIME FARMLANDS -----	246
Negative Determination -----	246
PUBLIC HEALTH AND SAFETY -----	246
Imminent Danger -----	246
ROADS -----	246
Maintenance -----	246
SIGNS AND MARKERS -----	246
Generally -----	246
SPOIL AND MINE WASTES -----	246-247
Generally -----	246
Downslope -----	247
STATE REGULATION -----	247
Generally -----	247
TEMPORARY RELIEF -----	247
Generally -----	247
Applications -----	247
TIPPLES AND PROCESSING PLANTS -----	247
At or Near a Minesite -----	247
TOPSOIL -----	247
Generally -----	247
Redistribution -----	247
UNDERGROUND OPERATIONS -----	248
Generally -----	248
VARIANCES AND EXEMPTIONS -----	248
Generally -----	248
2-Acre -----	248
WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS -----	248
Generally -----	248
Discharges from Disturbed Areas -----	248
WORDS AND PHRASES -----	248-249
SURFACE RESOURCES ACT -----	249-250
(See also Hearings, Mining Claims--if included in this Index.)	
GENERALLY -----	249
APPLICABILITY -----	249
VERIFIED STATEMENT -----	250
SURPLUS PROPERTY -----	250
(See also Federal Property & Administrative Services Act-- if included in this Index.)	
SURVEYS OF PUBLIC LANDS -----	250
(See also Boundaries, Public Lands--if included in this Index.)	
DEPENDENT RESURVEYS -----	250

Topical Index

Page(s)

TAYLOR GRAZING ACT -----	250
(See also Grazing Leases, Grazing Permits & Licenses-- if included in this Index.)	
GENERALLY -----	250
TIMBER SALES AND DISPOSALS -----	250
TRESPASS -----	250-251
GENERALLY -----	250-251
MEASURE OF DAMAGES -----	251
UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY	
ACQUISITION POLICIES ACT OF 1970 -----	251-253
(See also Appeals--if included in this Index.)	
GENERALLY -----	251
UNIFORM REAL PROPERTY ACQUISITION POLICY -----	251-252
Generally -----	251
Expenses Incidental to Transfer of Title to United States -----	252
UNIFORM RELOCATION ASSISTANCE -----	252-253
Generally -----	252
Moving and Related Expenses -----	252
Generally -----	252
Payments in Lieu of Moving and Related Expenses -----	252
Fixed Payment(s) -----	252
Taking of Business Operation -----	252
Payments in Lieu of Moving and Related Expenses -----	253
Replacement Housing Payment for Homeowners -----	253
Generally -----	253
Replacement Housing Payment for Tenants and Certain Others -----	253
WATER AND WATER RIGHTS -----	253-254
FEDERAL APPROPRIATION -----	253-254
STATE LAWS -----	254
WILD AND SCENIC RIVERS ACT -----	254
WILD FREE-ROAMING HORSES AND BURROS ACT -----	254
WILDERNESS ACT -----	254-256
WILDLIFE REFUGES AND PROJECTS -----	256
(See also Exchanges of Land, Migratory Bird Conservation Act--if included in this Index.)	
GENERALLY -----	256
LEASES AND PERMITS -----	256
WITHDRAWALS AND RESERVATIONS -----	257-260
GENERALLY -----	257
AUTHORITY TO MAKE -----	257
EFFECT OF -----	257-259
POWERSITES -----	259
RECLAMATION WITHDRAWALS -----	259
REVOCATION AND RESTORATION -----	259-260
STATE SELECTIONS -----	260
TEMPORARY WITHDRAWALS -----	260
WORDS AND PHRASES -----	260-261

SYMBOLS

ANCAB -- Alaska Native Claims Appeal Board
D -- Ad Hoc Appeals
IA-T -- Indian Appeals -- Tort
IBCA -- Interior Board of Contract Appeals
IBIA -- Interior Board of Indian Appeals
IBLA -- Interior Board of Land Appeals
IBMA -- Interior Board of Mine Operations Appeals
IBSMA -- Interior Board of Surface Mining &
Reclamation Appeals
M -- Solicitor's Opinion
OHA -- Office of Hearings and Appeals
SEC -- Office of the Secretary

* * * * *

Editor's Note: The headnotes in this volume have been sorted by a computer. Editorial changes have been made to allow for grouping of the headnotes where they were similar and/or identical to headnotes from two or more decisions.

<u>Page(s)</u>	<u>Page(s)</u>
A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981) -----6, 31, 35, 54, 64, 217, 227, 228, 235	Alaska, State of (Leland R. Estabrook), 54 IBLA 346 (May 12, 1981) -----14, 17, 234
Acting Area Director, Portland Area Office, Bureau of Indian Affairs; Sherman, Gertrude E. v., 9 IBIA 25 (June 29, 1981), 88 I.D. 619 -----34, 102, 105	Alexander, Betty, 53 IBLA 139 (Mar. 9, 1981) -----8, 160, 161, 225
Acting Deputy Comm'r of Indian Affairs; Menominee Tribal Enter- prises v., 9 IBIA 141 (Dec. 22, 1981) -----99	Alexander, Ken, 56 IBLA 129 (July 16, 1981) -----79, 113
Adams, Robert A., 57 IBLA 370 (Sept. 8, 1981) -----53, 218, 259	Alexander, Robert D., Paul D. Kennett, 59 IBLA 118 (Oct. 26, 1981) -----167, 170
Adams, Scott Q., 60 IBLA 288 (Dec. 17, 1981), 88 I.D. 1110 -----169, 178	All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981) -----65, 75, 81, 120, 121
Alaska Offshore Marine Services, Inc. & Milton Holmes, 6 ANCAB 134 (Oct. 23, 1981) -----22	Allison, William B. (Mr.), Execu- tor of the Estate of Amie B. Allison (Deceased), Uniform Relocation Assistance Appeal of, 4 OHA 117 (Feb. 13, 1981) -----251, 252
Alaska Placer Co., 5 ANCAB 260 (Apr. 24, 1981), 88 I.D. 511 -----22	Allstead, W. W., 58 IBLA 46 (Sept. 21, 1981) -----84, 143, 151, 155
Alaska, State of, 5 ANCAB 373 (July 28, 1981) -----22	Alminex USA, Inc., 55 IBLA 315 (June 26, 1981) -----183
6 ANCAB 230 (Dec. 15, 1981) -----23	Alpine Moving & Storage, Appeal of, IBCA-1434-2-81 (Oct. 21, 1981), 88 I.D. 979 -----42, 47, 49, 50, 51
6 ANCAB 233 (Dec. 15, 1981) -----23	Alyeska Pipeline Co., 52 IBLA 222 (Jan. 30, 1981) -----7, 16
6 ANCAB 236 (Dec. 15, 1981) -----23	Amax Exploration, Inc., 58 IBLA 312 (Oct. 16, 1981) -----108
6 ANCAB 239 (Dec. 15, 1981) -----23	Ambra Oil & Gas Co., 58 IBLA 67 (Sept. 22, 1981) -----162, 194, 204
6 ANCAB 256 (Dec. 21, 1981) -----23	American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981) -----110, 138, 140, 155, 156
6 ANCAB 259 (Dec. 21, 1981) -----23	American Telephone & Telegraph Co., 57 IBLA 215 (Aug. 27, 1981) -----14, 33, 39, 88, 96, 223
6 ANCAB 262 (Dec. 21, 1981) -----23	(On Reconsideration), 59 IBLA 343 (Nov. 5, 1981) -----15, 40, 96, 223, 235
54 IBLA 373 (May 19, 1981) -----225	Amoco Production Co., 53 IBLA 72 (Mar. 2, 1981) -----186, 188
58 IBLA 118 (Sept. 24, 1981) -----31, 227, 230	Amoroso, Patricia B., 55 IBLA 190 (June 16, 1981) -----162, 226
61 IBLA 68 (Dec. 31, 1981) -----15, 257	Ancowitz, Arthur, 53 IBLA 69 (Mar. 2, 1981) -----206
Alaska, State of v. Juneau Area Acting Director, Bureau of Indian Affairs & Arctic John Etalook, 9 IBIA 126 (Nov. 9, 1981), 88 I.D. 1020 -----99	58 IBLA 112 (Sept. 24, 1981) -----175, 204
Alaska, State of, Dept. of Trans- portation & Public Facilities, 5 ANCAB 281 (May 1, 1981) -----24	Andersen, Carl B., 61 IBLA 4 (Dec. 29, 1981) -----15, 32, 87, 114, 146, 158, 160, 219, 239
5 ANCAB 284 (May 4, 1981) -----22, 24	
5 ANCAB 307 (June 26, 1981), 88 I.D. 629 -----20, 26, 28, 225	
6 ANCAB 143 (Oct. 30, 1981) -----23	
6 ANCAB 150 (Nov. 27, 1981) -----23	

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Andersen, Robert L., et al., 56 IBLA 182 (July 20, 1981) -----	1, 174, 177, 221	Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981), 88 I.D. 41 -----	42, 44, 45, 46, 48, 49, 50, 226, 227, 229, 231, 233, 235
Anderson, C. J. & C. Joseph; U.S. v., 57 IBLA 256 (Aug. 28, 1981) -----	12, 129, 132, 135, 136, 227	Appeal of Franklin Instrument Co., Inc., IBCA-1270-6-79 (Feb. 26, 1981), 88 I.D. 326 -----	51, 52
Anderson, John R., 57 IBLA 149 (Aug. 25, 1981) -----	162, 207, 235	Appeal of IRT Corp., IBCA-1347-4-80 (Sept. 25, 1981), 88 I.D. 877 -----	42
Anderson, Kathleen I., 56 IBLA 214 (July 22, 1981) -----	167, 174	Appeal of Johnsonius & Sons, Inc., IBCA-1345-4-80 (Feb. 25, 1981) -----	48
Andrews, George H., 57 IBLA 221 (Aug. 27, 1981) -----	80, 113, 122	Appeal of Kordick & Son, Inc., & Steve P. Rados, Inc. (A Joint Venture), IBCA-1255-3-79 (Aug. 27, 1981), 88 I.D. 798 -----	49, 50
Anelson, Gregory, Sr. (On Recon- sideration), 60 IBLA 101 (Nov. 19, 1981) -----	18	Appeal of McCutcheon-Peterson (JV), IBCA-1392-9-80 (Mar. 12, 1981), 88 I.D. 361 -----	43, 45, 229
Angeloni, Randal, Douglas Blixt, 54 IBLA 56 (Apr. 9, 1981) -----	70, 79, 112, 147	Appeal of Mann Construction Co., Inc., IBCA-1280-7-79 (Dec. 10, 1981), 88 I.D. 1065 -----	48, 50
Angle, Jesse W. (Mr. & Mrs.), Uniform Relocation Assistance Appeal of, 4 OHA 160 (Apr. 29, 1981) -----	253	Appeal of Martin K. Eby Construc- tion Co., Inc., IBCA-1380-8-80 (Feb. 19, 1981) -----	44, 48
AOS Co., 59 IBLA 112 (Oct. 26, 1981) -----	74, 80, 114, 153	IBCA-1389-9-80 (Apr. 8, 1981), 88 I.D. 431 -----	43, 45, 228, 230
<u>A P P E A L (S) O F:</u>		Appeal of Mechaneer, Inc., IBCA- 1362-6-80 (Apr. 8, 1981) -----	48
Appeal of Alpine Moving & Storage, IBCA-1434-2-81 (Oct. 21, 1981), 88 I.D. 979 -----	42, 47, 49, 50, 51	Appeal of Nekoosa Contracting Corp., IBCA-1408-11-80 (June 30, 1981) -----	44, 46, 47, 49
Appeal of Asphalt, Inc., IBCA- 1331-2-80 (Sept. 15, 1981) -----	48, 49	Appeal of Nero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981), 88 I.D. 304 -----	43, 45, 46, 48, 49, 50
Appeal of Building Maintenance Specialist, Inc., IBCA-1397- 9-80 (June 15, 1981) -----	42, 44, 51, 52	Appeal of OAO Corp., IBCA-1427-1-81 (Sept. 15, 1981) -----	47
Appeal of Central American Construction Co., Inc., IBCA-1337-3-80 (Apr. 14, 1981) -----	51	Appeal of Prosser, Dean & Crew, IBCA-1471-6-81 (Aug. 28, 1981), 88 I.D. 809 -----	48, 52, 228, 230
Appeal of Dakota Titles & Records (A Joint Venture), IBCA-1420-1-81 (Feb. 24, 1981), 88 I.D. 324 -----	48, 50	Appeal of Scona, Inc., IBCA-1094- 1-76 (June 16, 1981), 88 I.D. 590 -----	48, 59, 61
Appeal of Dames & Moore, IBCA-1308-10-79 (Oct. 27, 1981), 88 I.D. 991 -----	44, 51	Appeal of Seldo Co., Inc., d.b.a. Desert Materials Co., IBCA-1194- 5-78 (Sept. 30, 1981), 88 I.D. 895 -----	46, 47, 50
Appeal of Dynadyne, Inc., IBCA- 1329-1-80 (Apr. 8, 1981), 88 I.D. 423 -----	42, 44	Appeal of Shale Development Corp., IBCA-1256-3-79 (May 18, 1981) -----	42, 46
Appeal of Elliott's Roofing Co., IBCA-1330-1-80 (Sept. 23, 1981), 88 I.D. 836 -----	43, 46, 50	Appeal of Singleton Contracting Corp., IBCA-1413-12-80 (Aug. 12, 1981), 88 I.D. 722 -----	43, 45, 46, 47, 50, 226
Appeal of Evergreen Helicopters, Inc., IBCA-1388-8-80 (Aug. 28, 1981), 88 I.D. 803 -----	49, 52		

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Appeal of Stuber, Allen, d.b.a. Stuber Construction Co., IBCA- 1369-6-80 (Mar. 11, 1981) -----43, 44	Armstrong, Hepburn T., 60 IBLA 140 (Nov. 24, 1981) -----194, 227
Appeal of S & W Contracting Co., Inc., IBCA-1307-10-79 (May 6, 1981), 88 I.D. 527 -----44	Asay, Reed Z., 55 IBLA 157 (June 9, 1981) -----4, 218, 251
Appeal of Systems Technology Asso- ciates, Inc., IBCA-1108-4-76 (Feb. 19, 1981), 88 I.D. 293 -----47	Ash, Anthony T., 52 IBLA 210 (Jan. 30, 1981) -----38, 39
IBCA-1108-4-76 (Apr. 30, 1981), 88 I.D. 521 -----230	Asphalt, Inc., Appeal of, IBCA-1331- 2-80 (Sept. 15, 1981) -----48, 49
Appeal of Valley Steel Builders, Inc., IBCA-1275-6-79 (Apr. 29, 1981), 88 I.D. 518 -----42	Atkins, Major G., 60 IBLA 284 (Dec. 17, 1981) -----14, 40, 76, 81, 118, 124, 234
Appeal of Warren, A. Helene, IBCA-1422-1-81 (Sept. 29, 1981) -----52	Atomic Fuel Coal Co., Inc., 3 IBSMA 107 (Apr. 23, 1981), 88 I.D. 477 -----242
IBCA-1422-1-81 (Nov. 9, 1981) -----230	Atomic Fuel Co., Inc., 3 IBSMA 287 (Sept. 17, 1981), 88 I.D. 824 -----244
Appeal of Washington State Uni- versity, IBCA-1467-6-81 & IBCA-1469-6-81 (Nov. 9, 1981), 88 I.D. 1016 -----42	Avery, Plet, 60 IBLA 159 (Nov. 24, 1981) -----65, 72
Appeals of Phillips Construction Co., IBCA-1295-8-79 & 1296-8-79 (July 31, 1981), 88 I.D. 689 -----47, 50, 51, 52	Axelsson, Dorothy C., 52 IBLA 146 (Jan. 16, 1981) -----200, 208
* * * * *	Ayers, Helen T., Roger Quintal, 61 IBLA 71 (Dec. 31, 1981) -----203, 211
Applegarth, Tom, 58 IBLA 224 (Sept. 30, 1981) -----80, 114, 160, 219, 239	Ayojiak, Mary (On Reconsidera- tion), 59 IBLA 384 (Nov. 9, 1981) -----17
Arctic Mining Co., 5 ANCAB 302 (May 29, 1981) -----22	Baccus, John W., 59 IBLA 288 (Oct. 30, 1981) -----78, 112, 146, 160, 219, 239
Area Director, Aberdeen Area Office, Bureau of Indian Affairs; Fort Berthold Land & Livestock Ass'n v., 8 IBIA 230 (Feb. 20, 1981), 88 I.D. 315 -----34, 94, 99	Bahny, William O., 56 IBLA 190 (July 20, 1981) -----5, 40, 71, 79, 113, 149
Area Director, Billings Area Office; Salois, Lenore v., 8 IBIA 283 (May 15, 1981) -----34, 106	Bailey, D. E., 57 IBLA 120 (Aug. 25, 1981) -----72, 117, 150, 161, 220
Area Director, Portland Area Office, Bureau of Indian Affairs; Hamlin, Ross v., 9 IBIA 16 (June 12, 1981) -----34	Baker, Bruce L. & Robert C., 55 IBLA 55 (May 29, 1981) -----59, 70, 79, 113
Area Director, Portland Area Office, Bureau of Indian Affairs; Weiser, Yvonne, et al. v., 9 IBIA 76 (Sept. 29, 1981) -----34, 102, 105	Bar X Sheep Co. et al., 56 IBLA 258 (July 24, 1981), 88 I.D. 665 -----95
ARI-MEX Oil & Exploration, Inc., 53 IBLA 37 (Feb. 26, 1981) -----177, 197	Barbat, William N., 56 IBLA 26 (July 8, 1981) -----70, 116, 122
Armstrong, Dale E., 53 IBLA 153 (Mar. 12, 1981) -----61, 66, 108, 195, 236, 237, 250, 261	Barbee, John W., et al., 60 IBLA 81 (Nov. 19, 1981) -----88, 224
	Barlow, Lillian, 58 IBLA 385 (Oct. 21, 1981) -----8, 15, 31, 38, 41, 52, 111, 139, 157, 216, 222, 225, 227
	Barnett, Mary A., 53 IBLA 328 (Mar. 26, 1981) -----200, 203
	Barnett, Pearl C., 52 IBLA 273 (Feb. 6, 1981) -----12, 40, 68, 78, 159, 218, 233, 238

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Barry, Geneva, et al., 54 IBLA 48 (Apr. 9, 1981) -----30, 89, 95, 228, 231, 233	Birchard, Phyllis J., 59 IBLA 247 (Oct. 29, 1981) -----83, 150
Barry, Nelson C., 57 IBLA 268 (Aug. 31, 1981) -----65, 80, 113, 142	Birnbaum, Herman, 58 IBLA 279 (Oct. 8, 1981) -----168, 193
Bastone, Joe, 52 IBLA 288 (Feb. 9, 1981) -----78, 112, 140, 146, 159, 218, 238	BJC/Knowles Architects Asso- ciates, Uniform Relocation Assistance Appeal of, 4 OHA 189 (Aug. 6, 1981) -----252
Bates, Don E., 55 IBLA 263 (June 25, 1981) -----79, 113, 148	Black, Donald E., 56 IBLA 354 (Aug. 3, 1981) -----80, 113, 123, 160, 219, 238
Bear Shield, John, Estate of, 9 IBIA 1 (June 5, 1981) -----102	Black, Herman, 60 IBLA 229 (Dec. 4, 1981) -----83, 150
Belco Petroleum Corp., 57 IBLA 3 (Aug. 5, 1981) -----2, 187, 215	Black Jack Oil Co., 59 IBLA 163 (Oct. 26, 1981) -----169, 178
Belknap, Robert E., et al., 55 IBLA 200 (June 16, 1981) -----55, 56, 62, 164, 173, 180, 183, 184, 186, 191, 198	Blackwood Fuel Co., Inc., 2 IBSMA 359 (Nov. 24, 1980), 87 I.D. 579 -----248
Bell, Judith Gail, 57 IBLA 139 (Aug. 25, 1981) -----58, 168, 192	Bliss, Patrick J., 6 ANCAB 181 (Nov. 30, 1981), 88 I.D. 1039 -----24, 26, 28
Belva Coal Co., Inc., 3 IBSMA 83 (Apr. 17, 1981), 88 I.D. 448 -----241, 243, 244, 246, 249	Bodie, John Richard, 54 IBLA 93 (Apr. 14, 1981) -----79, 112
Bender, Jack J., 54 IBLA 375 (May 19, 1981), 88 I.D. 550 -----161, 188, 194	Bolles, Walter E. (Mrs.), 58 IBLA 257 (Oct. 6, 1981) -----74, 119, 124, 152, 161, 220
Benham, Joe, 55 IBLA 45 (May 29, 1981) -----79, 113, 159, 219, 238	Bonaparte, Isaac & Katherine v. Comm'r of Indian Affairs, 9 IBIA 115 (Nov. 6, 1981) -----100
Bergman, Robert E. & Evan V., 53 IBLA 122 (Mar. 5, 1981) -----172, 191, 203	Boucher, Gary & Celia, 55 IBLA 272 (June 25, 1981) -----64, 88
Bergman, Warner (On Reconsidera- tion), 60 IBLA 214 (Nov. 27, 1981) -----17	Bowen, Aimee Marion (Edenshaw) & Phyllis Josephine Kimball; U.S. v., 8 IBIA 218 (Feb. 12, 1981), 88 I.D. 261 -----6, 19, 28, 104, 239
Bering Straits Native Corp., 6 ANCAB 127 (Oct. 21, 1981) -----23	Bowman, Samantha, 61 IBLA 20 (Dec. 29, 1981) -----65, 76, 112, 121, 154
Berringer, Bruce R., 60 IBLA 258 (Dec. 4, 1981) -----71, 149	Bowman, William E., 56 IBLA 312 (July 29, 1981) -----80, 113
Best, William T., 56 IBLA 234 (July 22, 1981) -----71, 149	Bradley, Vernon, 57 IBLA 351 (Sept. 8, 1981) -----70, 81, 118, 147
Bettles, Susan, 60 IBLA 75 (Nov. 19, 1981) -----86, 119	Braker, Bernard J., 54 IBLA 332 (May 5, 1981) -----59, 70, 79, 113
Bevill, Betsy Romaine, 58 IBLA 260 (Oct. 6, 1981) -----3, 35, 98, 217, 236	Brandl, Philip, George Vournas, 54 IBLA 343 (May 7, 1981) -----79, 113, 122
Bevis, William H., 52 IBLA 125 (Jan. 13, 1981) -----160, 163, 171, 190, 203, 219	Braniff, Gerald H.; U.S. v., 59 IBLA 337 (Nov. 5, 1981) -----16, 59, 61
Bierlein, John W., 53 IBLA 48 (Feb. 27, 1981) -----164, 169, 172, 179	Brannon, Allen L., Sr., 53 IBLA 251 (Mar. 19, 1981) -----138, 156, 257
Birch, Marion, 53 IBLA 366 (Mar. 30, 1981) -----81, 110	Braun, P. M., 60 IBLA 246 (Dec. 4, 1981) -----164, 194, 197

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Brazington, Galen B., 59 IBLA 255 (Oct. 29, 1981) -----31, 228, 231	California State Lands Comm'n, 58 IBLA 213 (Sept. 29, 1981) -----8, 31, 90, 227, 230
Brice, William B., 53 IBLA 174 (Mar. 16, 1981) -----7, 164, 180, 182	Campbell, Lyle E. & Diane; U.S. v., 59 IBLA 261 (Oct. 29, 1981) -----107, 142
Brois, John A. (Mr. & Mrs.), Uniform Relocation Assistance Appeal of, 4 OHA 208 (Nov. 12, 1981) -----252	Cannon, Bart, 57 IBLA 281 (Aug. 31, 1981) -----72, 84, 124
Brookshire, Lairy D., et al., 56 IBLA 73 (July 15, 1981) -----4, 140, 155, 157, 158, 216, 259	Carbon Fuel Co., 3 IBSMA 207 (July 17, 1981), 88 I.D. 660 -----240, 246, 249
Brown, Caroline E., 56 IBLA 334 (July 30, 1981) -----80, 113, 123, 160, 219, 238	Cardillo, James (Mr. & Mrs.), Uniform Relocation Assistance Appeal of, 4 OHA 177 (July 14, 1981) -----252
Brown, Jerome F., 56 IBLA 364 (Aug. 3, 1981) -----80, 113	Carlo, William, Sr. (On Recon- sideration), 53 IBLA 168 (Mar. 12, 1981) -----16, 216, 259
Brown, Marvin E. & Ione M., 52 IBLA 44 (Jan. 6, 1981) -----4, 40, 77, 111, 140, 145	Carson, Raymond D., et al., Heirs of, 58 IBLA 265 (Oct. 7, 1981) -----74, 80, 114, 160, 219, 239
Brown, Melvin A., 53 IBLA 45 (Feb. 27, 1981) -----54, 206	Cascade Holistic Economic Consul- tants et al., 60 IBLA 293 (Dec. 18, 1981) -----8, 10, 32, 159, 228, 236
Brown, Patrick O., 55 IBLA 336 (June 26, 1981) -----88, 223, 224	Cascade Holistic Economic Consul- tants & Oregon Wilderness Coal- ition, 58 IBLA 332 (Oct. 16, 1981) -----54, 158
Brown, Russell D., 56 IBLA 345 (Aug. 3, 1981) -----201, 209	Cascade Motorcycle Club, 56 IBLA 134 (July 20, 1981) -----67, 217, 237
Brown, Ruth Eloise, 60 IBLA 328 (Dec. 18, 1981) -----202, 205, 211	Casler, George E., 59 IBLA 189 (Oct. 27, 1981) -----80, 114, 123
Buchanan, John C. & Theresa K., 52 IBLA 387 (Feb. 19, 1981) -----78, 140, 146, 260	Cates, Rodney N., 57 IBLA 276 (Aug. 31, 1981) -----80, 114
Building Maintenance Specialist, Inc., Appeal of, IBCA-1397-9- 80 (June 15, 1981) -----42, 44, 51, 52	Central American Construction Co., Inc., Appeal of, IBCA- 1337-3-80 (Apr. 14, 1981) -----51
Bureau of Land Management v. Holland Livestock Ranch & John J. Casey, 54 IBLA 247 (Apr. 27, 1981) -----11, 12, 13, 15, 58, 60, 94, 95	Century Oil and Gas Corp., 58 IBLA 227 (Sept. 30, 1981) -----169, 193
Burr, David, et al., 56 IBLA 225 (July 22, 1981) -----161, 175, 183, 185, 260	Cerminaro, Fred R., 52 IBLA 116 (Jan. 13, 1981) -----161, 163, 195
Burt, John, et al.; U.S. v., 59 IBLA 326 (Nov. 5, 1981) -----31, 34, 41, 129, 138, 232, 233, 235	Chafe, Bonnie L., 57 IBLA 384 (Sept. 10, 1981) -----70, 147
Buttgereit, Lloyd M., 52 IBLA 363 (Feb. 19, 1981) -----64, 69, 112, 121, 160, 219	Champneys, Sonny, 58 IBLA 29 (Sept. 16, 1981) -----64, 84, 114, 151
Byron, Thomas F., Anna B. Philo, 52 IBLA 49 (Jan. 6, 1981) -----77, 111, 140, 144	Chapekis, Cleo, 57 IBLA 398 (Sept. 14, 1981) -----7, 168, 170, 175, 221
California Ass'n of Four-Wheel Drive Clubs, Inc., National Outdoor Coalition, 60 IBLA 240 (Dec. 4, 1981) -----91, 255	Chastain, Adron J. (Mr. & Mrs.), et al., Uniform Relocation Assistance Appeals of, 4 OHA 166 (June 8, 1981) -----251
	Chastain, Adron J. (Mr. & Mrs.), T. O. Davis, Sr. (Mr. & Mrs.), 4 OHA 134 (Mar. 24, 1981) -----106

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Chevron U.S.A., Inc., 52 IBLA 278 (Feb. 6, 1981) -----	195, 258	Comm'r of Indian Affairs; Manning, Alfred v., 9 IBIA 36 (July 10, 1981) -----	100, 104
Chiskok, Evan, Alex Hunt, Angela Odinzoff, Antonia Raymond (On Reconsideration), 61 IBLA 1 (Dec. 28, 1981) -----	17	Comm'r of Indian Affairs & Yavapai-Prescott Tribe, Kuykendall, Marlin D. v., 9 IBIA 90 (Oct. 23, 1981) -----	34, 230
Chodosh, Norman, 60 IBLA 260 (Dec. 14, 1981) -----	171	Commons, Michael G., 52 IBLA 396 (Feb. 24, 1981) -----	77
Christensen, Elizabeth A., 52 IBLA 113 (Jan. 13, 1981) -----	57, 199, 208	Concord Coal Corp., 3 IBSMA 26 (Feb. 19, 1981), 88 I.D. 273 -----	241, 244
Chugach Natives, Inc., 5 ANCAB 301 (May 18, 1981) -----	22	3 IBSMA 92 (Apr. 17, 1981), 88 I.D. 456 -----	241, 249
Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981) -----	160, 179, 193, 198, 219, 239	Conley, George E., 61 IBLA 78 (Dec. 31, 1981) -----	179
City of Homer, 6 ANCAB 203 (Nov. 30, 1981), 88 I.D. 1047 -----	25	Connell, Thomas, 56 IBLA 23 (June 30, 1981) -----	166, 204, 220
City of Kodiak, 5 ANCAB 297 (May 13, 1981) -----	22	Connelly, Thomas H., Vimco Exploration, Inc., 52 IBLA 206 (Jan. 27, 1981) -----	179
C & K Petroleum Co., 59 IBLA 301 (Nov. 3, 1981) -----	91, 255, 261	Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981), 88 I.D. 918 -----	5, 40, 73, 85, 119, 125, 143, 152
Clark, Dean A. & Craig D., 53 IBLA 362 (Mar. 30, 1981) -----	87	Conoco, Inc. et al., 61 IBLA 23 (Dec. 29, 1981) -----	92, 256, 261
Clark, Donald R., 56 IBLA 167 (July 20, 1981) -----	88, 223, 224	Consolidation Coal Co., 3 IBSMA 228 (July 31, 1981), 88 I.D. 685 -----	245, 248, 249
Clifton, Harvey A., et al., 60 IBLA 29 (Nov. 16, 1981) -----	66, 75, 125, 142	Conway, Joe, 59 IBLA 314 (Nov. 4, 1981) -----	169, 176
Cluett, John S., 52 IBLA 141 (Jan. 16, 1981) -----	37, 38, 39	Cook, Don, 60 IBLA 255 (Dec. 4, 1981) -----	7, 53, 60, 61, 81, 114, 123, 161, 232
Cluzen, Robert C., 55 IBLA 12 (May 26, 1981) -----	79, 113	Cook, Edgar W. & Marlene, 58 IBLA 358 (Oct. 20, 1981) -----	5, 8, 40, 57, 59, 85, 115, 152
Cochran, Lloyd, 52 IBLA 231 (Feb. 3, 1981) -----	68	Cook, Matthew, Estate of, 9 IBIA 52 (July 29, 1981), 88 I.D. 676 -----	101, 102
Coggin, H. Mason, 54 IBLA 224 (Apr. 27, 1981) -----	78, 140, 146, 260	Cook, Wayne, 58 IBLA 350 (Oct. 19, 1981) -----	5, 40, 62, 74, 85, 118, 152, 160, 219, 239
C.O.G.S., Inc., 57 IBLA 128 (Aug. 25, 1981) -----	80, 113, 121	Cooper, William, 60 IBLA 50 (Nov. 17, 1981) -----	75, 81, 118, 124, 153
Cohoe, Everett V., 60 IBLA 235 (Dec. 4, 1981) -----	81, 114	Corns, Graham R.; U.S. v., 53 IBLA 5 (Feb. 26, 1981) -----	8, 9, 11, 12, 30, 41, 127, 130, 132, 142, 232
Cole, James W., 59 IBLA 280 (Oct. 30, 1981) -----	80, 114, 125	Coronado Oil Co., 52 IBLA 308 (Feb. 10, 1981) -----	55, 159, 207, 208, 218
Cole, Ronald, 56 IBLA 131 (July 16, 1981) -----	82, 106		
Coltharp, Edward H., Dale F. Killian, 58 IBLA 234 (Oct. 6, 1981) -----	190, 210, 212		
Comm'r of Indian Affairs; Bonaparte, Isaac & Katherine v., 9 IBIA 115 (Nov. 6, 1981) -----	100		

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Cosdon, Walter D., 56 IBLA 112 (July 16, 1981) -----	79, 113, 123, 160, 219, 238	Daleske, Donald J. (Mr.), Uniform Relocation Assistance Appeal of, 4 OHA 101 (Jan. 8, 1981) -----	253
Coseka Resources (U.S.A.), Ltd., 56 IBLA 19 (June 30, 1981) -----	207, 209	Dames & Moore, Appeal of, IBCA- 1308-10-79 (Oct. 27, 1981), 88 I.D. 991 -----	44, 51
Cotter, R. Hugo C., 58 IBLA 145 (Sept. 25, 1981), 88 I.D. 870 -----	171	D'Amico, Vincent M. & Wolt C. - Stempel, 55 IBLA 116 (June 3, 1981) -----	5, 62, 159, 165, 170, 219, 238
Council of the Southern Mountains, Inc. v. Office of Surface Mining Reclamation & Enforcement, 3 IBSMA 44 (Mar. 23, 1981), 88 I.D. 394 -----	242	Dan Creek Placer Mines, 52 IBLA 243 (Feb. 6, 1981) -----	68, 121
Covington, Robert H., et al., 55 IBLA 232 (June 22, 1981), 88 I.D. 601 -----	18, 19, 196, 256, 258, 261	Darby, Melvin & Bernice, 56 IBLA 41 (July 8, 1981) -----	79, 113
Coy, Glenn F., Estate of, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981), 88 I.D. 236 -----	7, 30, 163, 179, 182, 185, 190, 220, 225, 226, 261	Daugherty, Eugene E., 54 IBLA 352 (May 12, 1981) -----	82, 116, 122, 147
Coyne, Don Chris A., 52 IBLA 1 (Jan. 5, 1981) -----	68, 144	Davies, John R., 56 IBLA 175 (July 20, 1981) -----	71, 148
Cramer, Philip, 57 IBLA 386 (Sept. 10, 1981) -----	73, 150	Davis Oil Co., 53 IBLA 62 (Mar. 2, 1981) -----	93, 211
Crews, Inez, et al., 59 IBLA 257 (Oct. 29, 1981) -----	65, 75, 142, 153	Day, Blanch P., Wilma Jean Kendall; U.S. v., 56 IBLA 300 (July 29, 1981) -----	11, 127, 134, 137
Cripple Creek Gold Production Corp., 53 IBLA 188 (Mar. 17, 1981) -----	38, 39	Deloycheet, Inc., 5 ANCAB 165 (Feb. 20, 1981) -----	22
Crowley, Emery, et al., 54 IBLA 229 (Apr. 27, 1981) -----	70, 79, 113, 159, 218, 238	Delta Mining Corp., 3 IBSMA 252 (Aug. 13, 1981), 88 I.D. 742 -----	242
Croxen, Fred W., III, 56 IBLA 318 (July 29, 1981) -----	83, 116, 149, 160, 219, 238	Dennis, Junior L., 61 IBLA 8 (Dec. 29, 1981) -----	64, 139, 212
Cultee, William Mason, Estate of, 9 IBIA 43 (July 27, 1981) -----	103, 104	Denver & Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981) -----	33, 39, 53, 58, 88, 224
Curtis, Clayton V., 54 IBLA 184 (Apr. 22, 1981) -----	79, 115, 121, 160, 219	DeRosier, Bruce A., 59 IBLA 283 (Oct. 30, 1981) -----	78, 160, 219, 239
Cuzzocreo, Ernest M., 54 IBLA 108 (Apr. 15, 1981) -----	79, 115, 122	DeSalvo, Patricia Ann, 58 IBLA 1 (Sept. 15, 1981) -----	7, 168, 170, 175, 221
Cyprus Mines Corp., 56 IBLA 160 (July 20, 1981) -----	82, 106	Desens, Wilbur G., et al., 54 IBLA 271 (Apr. 28, 1981) -----	55, 56, 62, 164, 173, 180, 182, 184, 186, 191, 198
Dahle, Lynn, 58 IBLA 73 (Sept. 22, 1981) -----	31, 228, 231	DeVilbiss, Ray (Wolverine Grazing Ass'n), 5 ANCAB 265 (Apr. 28, 1981), 88 I.D. 513 -----	24, 26
Daily, James K., 58 IBLA 134 (Sept. 24, 1981) -----	80, 114	6 ANCAB 122 (Oct. 6, 1981) -----	21, 22
Dakota Titles & Records (A Joint Venture), Appeal of, IBCA-1420- 1-81 (Feb. 24, 1981), 88 I.D. 324 -----	48, 50	Devon Corp., 57 IBLA 131 (Aug. 25, 1981) -----	186, 190
		Dia Art Foundation, 56 IBLA 357 (Aug. 3, 1981) -----	70, 147

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981), 88 I.D. 826	-----243, 244, 246, 247, 248	Dredge Corp. (The); U.S. v., 54 IBLA 281 (Apr. 28, 1981)	-----11, 128, 134, 136, 227
Dietrich, Jane Ray, 55 IBLA 380 (June 29, 1981)	-----166, 183	Drummond Coal Co., 3 IBSMA 100 (Apr. 21, 1981), 88 I.D. 474	-----246, 247, 249
Dilday, Ted, 56 IBLA 337 (July 30, 1981), 88 I.D. 682	-----71, 117	Dumas, Richard E., <u>et al.</u> , 55 IBLA 382 (June 29, 1981)	-----79, 113
DiMarco, Richard J., 53 IBLA 130 (Mar. 5, 1981)	-----172, 194, 197	Dunbar Stone Co.; U.S. v., 56 IBLA 61 (July 10, 1981)	-----9, 15, 30, 58, 127, 128, 131, 139, 157, 226, 258
Dire, Nick, <u>et al.</u> , 55 IBLA 151 (June 8, 1981)	-----88, 225	Duncan, Allen, 53 IBLA 101 (Mar. 4, 1981), 88 I.D. 345	-----34, 216
Dodgen, Nova L., 54 IBLA 340 (May 7, 1981)	-----109, 179, 196	Duval, Maurice, <u>et al.</u> ; U.S. v., 53 IBLA 341 (Mar. 26, 1981)	-----11, 128, 136
Dolezal, Carol, 56 IBLA 52 (July 8, 1981)	-----166	Dye, Lawrence E., 57 IBLA 360 (Sept. 8, 1981)	-----59, 61, 181
Dome Petroleum Corp., 59 IBLA 370 (Nov. 9, 1981), 88 I.D. 1012	-----202, 210	Dynadyne, Inc., Appeal of, IBCA-1329-1-80 (Apr. 8, 1981), 88 I.D. 423	-----42, 44
Dome Petroleum Corp. <u>et al.</u> , 57 IBLA 310 (Aug. 31, 1981)	-----18, 19, 196, 256, 258, 261	Earth Power Corp., Thermal Resources, Inc., 55 IBLA 249 (June 22, 1981), 88 I.D. 609	-----93
Douglas, Kerry & Ingrid, 53 IBLA 18 (Feb. 26, 1981)	-----65, 69, 112, 121	Eckiwaudah, Jane, a.k.a. Emma Chahsenah, Estate of, 9 IBIA 112 (Oct. 30, 1981)	-----101, 103, 104
Dowler, Virgie, 57 IBLA 389 (Sept. 10, 1981)	-----80, 114, 123, 160, 219, 238	Eichner, Kenneth C., 56 IBLA 391 (Aug. 3, 1981)	-----83, 117, 149
Doyon, Ltd., 5 ANCAB 163 (Jan. 14, 1981)	-----22	Ekker, Riter & Kerry B., 58 IBLA 251 (Oct. 6, 1981)	-----84, 118, 159
5 ANCAB 354 (July 24, 1981)	-----18, 20, 21, 22, 27, 28, 29	Elliott's Roofing Co., Appeal of, IBCA-1330-1-80 (Sept. 23, 1981), 88 I.D. 836	-----43, 46, 50
5 ANCAB 368 (July 27, 1981)	-----25, 27, 29, 240	Energetics, Inc., 52 IBLA 236 (Feb. 3, 1981)	-----200, 208
6 ANCAB 27 (Aug. 19, 1981)	-----25, 27, 29, 240	Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)	-----5, 62, 190, 199, 209, 212
6 ANCAB 32 (Aug. 19, 1981)	-----25, 27, 29, 240	Engelhardt, Daniel A., 61 IBLA 65 (Dec. 31, 1981)	-----7, 97, 169, 195
6 ANCAB 60 (Aug. 24, 1981)	-----25, 27, 29, 240	Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)	-----5, 14, 40, 74, 81, 118, 124, 146, 234
6 ANCAB 95 (Sept. 28, 1981), 88 I.D. 886	-----20, 21, 27, 29, 221	Erickson, John R., 57 IBLA 157 (Aug. 25, 1981)	-----65, 72, 150, 155
6 ANCAB 129 (Oct. 22, 1981)	-----20, 21, 27, 29, 221	Erickson, Josephine (Mrs.), Uniform Relocation Assistance Appeal of, 4 OHA 184 (July 30, 1981)	-----252, 253
6 ANCAB 138 (Oct. 30, 1981)	-----18, 20, 21, 29		
6 ANCAB 145 (Nov. 24, 1981)	-----23		
6 ANCAB 219 (Dec. 14, 1981), 88 I.D. 1086	-----12, 20, 21, 25, 27, 29, 240		
6 ANCAB 242 (Dec. 16, 1981), 88 I.D. 1105	-----12, 20, 21, 25, 27, 29, 240		
Doyon, Ltd. & State of Alaska, 5 ANCAB 324 (June 26, 1981), 88 I.D. 636	-----25, 27, 29, 240		

Table of Decisions Reported

Page(s)Page(s)E S T A T E O F:

Estate of Bear Shield, John, 9 IBIA 1 (June 5, 1981) -----	102	Estate of Young Bear, Victor (Supp.), 8 IBIA 254 (Mar. 26, 1981), 88 I.D. 410 -----	101
* * * * *			
Estate of Cook, Matthew, 9 IBIA 52 (July 29, 1981), 88 I.D. 676 -----	101, 102	Estremado, D., 55 IBLA 49 (May 29, 1981) -----	139, 147
Estate of Coy, Glenn F., Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981), 88 I.D. 236 -----	7, 30, 163, 179, 182, 185, 190, 220, 225, 226, 261	Eurafrep, Inc., 55 IBLA 275 (June 25, 1981) -----	187, 222
Estate of Cultee, William Mason, 9 IBIA 43 (July 27, 1981) -----	103, 104	Evanoff, John, 58 IBLA 403 (Oct. 21, 1981) -----	80, 115, 125
Estate of Eckiwaudah, Jane, a.k.a. Emma Chahsenah, 9 IBIA 112 (Oct. 30, 1981) -----	101, 103, 104	Evans, Duval (Mr. & Mrs.), Uniform Relocation Assistance Appeal of, 4 OHA 107 (Jan. 23, 1981) -----	251, 253
Estate of George, Walter & Minnie Racehorse George Snipe, 9 IBIA 20 (June 12, 1981) -----	102, 103	Evans, Frank E., 60 IBLA 44 (Nov. 17, 1981) -----	86, 89, 119, 141, 153, 160, 219, 239
Estate of Good Elk (or Pacer), Howard, 9 IBIA 38 (July 20, 1981) -----	101, 102	Evergreen Helicopters, Inc., Appeal of, IBCA-1388-8-80 (Aug. 28, 1981), 88 I.D. 803 -----	49, 52
9 IBIA 41 (July 20, 1981) -----	102	Everly, Walter, 52 IBLA 58 (Jan. 6, 1981) -----	145
Estate of Hawes, Alfred N., <u>et al.</u> ; U.S. v., 52 IBLA 164 (Jan. 21, 1981) -----	132	Ewell, W. LeRoy, 58 IBLA 121 (Sept. 24, 1981) -----	84, 118, 159
Estate of Knight, Dana A., 9 IBIA 82 (Oct. 22, 1981), 88 I.D. 987 -----	100	Fabisiak, Michael J., 58 IBLA 243 (Oct. 6, 1981) -----	80, 114, 123
Estate of Lumpmouth, Thomas Elward, 8 IBIA 275 (Apr. 15, 1981) -----	101, 102, 105	Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981) -----	5, 8, 14, 40, 57, 59, 69, 81, 115, 146, 160, 219, 234, 239
Estate of Medicinebird, Homer James, 8 IBIA 289 (May 21, 1981) -----	104	Falter, L. L., John E. Weeks, 52 IBLA 313 (Feb. 10, 1981) -----	69, 78, 159, 218, 238
Estate of Monroe, Robert R., 9 IBIA 67 (Sept. 3, 1981) -----	101	Farmington Coal Co., 3 IBSMA 182 (June 29, 1981), 88 I.D. 616 -----	249
Estate of Ritchie, Mary B., 56 IBLA 361 (Aug. 3, 1981) -----	80, 113, 123, 160, 219, 238	Farrell, John C., 55 IBLA 42 (May 28, 1981) -----	144, 156, 158, 216, 259
Estate of Saubel, Ronald Richard, 9 IBIA 94 (Oct. 28, 1981), 88 I.D. 993 -----	103	Feldslite Corp. of America, 56 IBLA 78 (July 15, 1981), 88 I.D. 643 -----	65, 142
Estate of Solis, Angeline LaBelle, 8 IBIA 312 (May 29, 1981) -----	100, 103	Felmont Oil Corp., 56 IBLA 321 (July 29, 1981) -----	80, 113
Estate of Stahl, Kenneth D., 56 IBLA 276 (July 28, 1981) -----	79, 113	Fennell, Robert E., Clair B. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981) -----	5, 8, 57, 59, 62, 70, 116, 123, 148
Estate of Turtle, Mark, Sr., 8 IBIA 272 (Apr. 15, 1981) -----	101, 102, 105	Fenwick, Jeannette L., 52 IBLA 250 (Feb. 6, 1981) -----	200, 203, 208
Estate of Willessi, Joseph, 8 IBIA 295 (May 28, 1981), 88 I.D. 561 -----	101, 103		

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
F & F Mining Co., Inc., 60 IBLA 178 (Nov. 25, 1981) -----	76, 120, 126	Franklin Instrument Co., Inc., Appeal of, IBCA-1270-6-79 (Feb. 26, 1981), 88 I.D. 326 -----	51, 52
Fields, Art, Russel Adams, 57 IBLA 142 (Aug. 25, 1981) ----	83, 150, 228, 231	Franklin, Magdalene Pickering, 57 IBLA 244 (Aug. 27, 1981) -----	72, 150
Fillerup, Albert L., 58 IBLA 194 (Sept. 29, 1981) -----	74, 80, 114, 151, 160, 219, 239	Freemont Energy Corp., 58 IBLA 197 (Sept. 29, 1981) -----	80, 114
Fillmore, Lela J., 56 IBLA 385 (Aug. 3, 1981) -----	80, 113, 123, 160, 219, 238	Frogley, Ralph F., Melvin S. Eilers; U.S. v., 54 IBLA 321 (Apr. 30, 1981) -----	130, 134, 143
Fisher, Fletcher D., 59 IBLA 150 (Oct. 26, 1981) -----	80, 106, 114, 142	Fryrear, Terry Burl, 58 IBLA 94 (Sept. 24, 1981) -----	3, 35, 98, 217, 236
Fitzgerald, Clarence E., 55 IBLA 31 (May 28, 1981) -----	131, 139, 156, 254, 258	Fuel Resources Development Co., 57 IBLA 90 (Aug. 24, 1981) -----	201, 204, 210
Fitzpatrick, Michaela M. & George M., 55 IBLA 108 (June 1, 1981) -----	1, 173, 177	59 IBLA 378 (Nov. 9, 1981) -----	91, 223, 224
Flanagan, Phillip E., 57 IBLA 357 (Sept. 8, 1981) -----	181	Fuller, Derrick, 56 IBLA 33 (July 8, 1981) -----	166, 174, 177
Fluor Utah, Inc., Appeal of, IBCA-1068-4-75 (Jan. 15, 1981), 88 I.D. 41 -----	42, 44, 45, 46, 48, 49, 50, 226, 227, 229, 231, 233, 235	Fyten, Warren J., 58 IBLA 381 (Oct. 21, 1981) -----	80, 114, 152
Flynn, Donald E. & Heirs of Henry Orock (Deceased); U.S. v., 53 IBLA 208 (Mar. 18, 1981), 88 I.D. 373 -----	16, 19, 232	Gallagher, D. R., 54 IBLA 72 (Apr. 13, 1981) -----	170, 172
FMC & PLIM Corp. (The), 56 IBLA 240 (July 22, 1981) -----	167	Gana-a' Yoo, Ltd., 6 ANCAB 45 (Aug. 24, 1981) -----	25, 27, 29, 240
FMC Corp., 54 IBLA 77 (Apr. 14, 1981) -----	6, 62, 109, 237, 260	6 ANCAB 50 (Aug. 24, 1981) -----	25, 27, 29, 240
Foderick, John W., 53 IBLA 258 (Mar. 19, 1981) -----	177, 195	6 ANCAB 55 (Aug. 24, 1981) -----	25, 27, 29, 240
Forsberg, Dennis, 58 IBLA 346 (Oct. 19, 1981) -----	74, 80, 114, 124	Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981), 88 I.D. 24 -----	35, 36, 37, 219, 220, 221, 222
Forsgren, Richard E., 54 IBLA 362 (May 18, 1981) -----	70, 147	Garrison, L. E., 52 IBLA 131 (Jan. 16, 1981) -----	59, 68, 112, 120
Fort Berthold Land & Livestock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 230 (Feb. 20, 1981), 88 I.D. 315 -----	34, 94, 99	Gassin, Theo R., 55 IBLA 257 (June 22, 1981) -----	185
Foster, Steve, Elmer Brewster, 56 IBLA 282 (July 28, 1981) -----	131, 139, 157, 258	General Electric Co., Nellie McLaughlin, 55 IBLA 185 (June 16, 1981) -----	70, 123
Fouche, Albert, James Ulberg, 58 IBLA 230 (Oct. 6, 1981) -----	80, 114	General H. E. W. Corp., 59 IBLA 320 (Nov. 4, 1981) -----	218
Fox, Earl F.; U.S. v., 53 IBLA 333 (Mar. 26, 1981) -----	11, 127, 133	Genger, Judy H., 59 IBLA 199 (Oct. 27, 1981) -----	65, 69, 112, 125
Francis, Elizabeth, 60 IBLA 6 (Nov. 12, 1981) -----	75, 81, 118, 124, 153	George, Jimmie A., Sr., 60 IBLA 14 (Nov. 16, 1981) -----	15, 18, 235
		George Reddy & Associates, 59 IBLA 359 (Nov. 9, 1981) -----	169, 194, 198
		George, Walter & Minnie Racehorse, George Snipe, Estate of, 9 IBIA 20 (June 12, 1981) -----	102, 103
		Gerard, C. H. Coster, 56 IBLA 17 (June 30, 1981) -----	166, 174

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Gibson, Jimmy Lorn, 59 IBLA 170 (Oct. 26, 1981) -----2, 97, 214	Grafton Coal Co., Inc., 3 IBSMA 175 (June 26, 1981), 88 I.D. 613 -----241, 242, 245
Gibson, Mary Patricia Anne Newman, <u>et al.</u> , 52 IBLA 216 (Jan. 30, 1981), 88 I.D. 244 -----2, 97, 214	Graham, Glenn D. & Lynne L., 55 IBLA 39 (May 28, 1981) -----79, 113, 122
Gifford, Gladys Lee Cardwell, Betty Ann Gifford Jarman, 55 IBLA 332 (June 26, 1981) -----3, 35, 98, 217, 236	Grant, Grace, 58 IBLA 366 (Oct. 20, 1981) -----171, 175, 178
Gifford, Marvin Coy, <u>et al.</u> , 58 IBLA 98 (Sept. 24, 1981) -----3, 35, 98, 217, 236	Gray, Kenneth H., Jay R. Garner, 60 IBLA 110 (Nov. 20, 1981) -----181
Gifford, Samuel Lee, <u>et al.</u> , 53 IBLA 23 (Feb. 26, 1981) -----2, 32, 35, 97, 214, 217, 236	Greater Pardee, Inc., 3 IBSMA 313 (Sept. 24, 1981), 88 I.D. 846 -----242, 247
(On Reconsideration), 55 IBLA 1 (May 21, 1981) -----2, 97, 214	Greenlaw, Gary M., Ronald D. Sharp, 56 IBLA 109 (July 16, 1981) -----79, 113, 123, 160, 219, 238
Gilberg, Arnold L., 57 IBLA 46 (Aug. 17, 1981) -----58, 201, 210	Gregory Lumber Co., Inc., 54 IBLA 309 (Apr. 30, 1981) -----250
Gilbertson, Don G., 59 IBLA 143 (Oct. 26, 1981) -----80, 114, 123	Griner, Philip I., 52 IBLA 179 (Jan. 26, 1981) -----77, 145, 220
Gilmore, Mart I., 55 IBLA 128 (June 3, 1981) -----69, 160, 219, 238	Grynberg, Jack J., 53 IBLA 165 (Mar. 12, 1981) -----6, 56, 62, 182, 200, 203, 208
Gimblett, Dale F., 60 IBLA 341 (Dec. 22, 1981) -----92, 111	GSA Reserve Corp., 55 IBLA 162 (June 9, 1981) -----79, 113, 123
Gion, Edith, 56 IBLA 375 (Aug. 3, 1981) -----80, 113, 123, 160, 219, 238	Guntert, Ronald M. & Marion G., 60 IBLA 200 (Nov. 27, 1981) -----57, 81, 114, 160, 219, 239
Goatcher, Eugene M., 58 IBLA 337 (Oct. 19, 1981) -----80, 114, 123, 161, 220	Guzek, Henri, 52 IBLA 200 (Jan. 26, 1981) -----64, 77, 145, 160, 219
Gonzalez, Jose G., 52 IBLA 270 (Feb. 6, 1981) -----78, 129	Haas, Walter S., Jr., 55 IBLA 283 (June 25, 1981) -----254, 261
Good Elk (or Pacer), Howard, Estate of, 9 IBIA 38 (July 20, 1981) -----101, 102	Haas, Warren R., 57 IBLA 247 (Aug. 28, 1981) -----41, 175, 181
9 IBIA 41 (July 20, 1981) -----102	Haggard, James C., 55 IBLA 36 (May 28, 1981) -----177, 195
Goodman, Clara, 6 ANCAB 17 (Aug. 5, 1981), 88 I.D. 718 -----23, 26	Hallauer, Wilbur G., <u>et al.</u> , 52 IBLA 202 (Jan. 26, 1981) -----32, 143
Goodrich, Charles, 60 IBLA 25 (Nov. 16, 1981) -----171, 178	Hamlin, Ross <u>y.</u> , Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 16 (June 12, 1981) -----34
Gossett, Charley E., Jr., <u>et al.</u> , 54 IBLA 139 (Apr. 17, 1981) -----79, 113, 121	Hammond, Patrick E., 60 IBLA 205 (Nov. 27, 1981) -----254
Gosuk, Jack (On Reconsideration), 54 IBLA 306 (Apr. 29, 1981) -----17	Hanan, Albert, <u>et al.</u> ; J. A. Jack & Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981) -----20, 21, 25, 26, 29, 131, 143, 220
Gould, Glen, 52 IBLA 305 (Feb. 10, 1981) -----30, 64, 112, 121, 228, 230	Hand, William M., 54 IBLA 303 (Apr. 29, 1981) -----70, 116, 122, 159, 218, 238
Gower, Frank H., Jr., 53 IBLA 146 (Mar. 9, 1981) -----1, 172, 176	

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Harris, Dennis, 55 IBLA 280 (June 25, 1981) -----110, 163, 187	Henry, Betty L., 55 IBLA 47 (May 29, 1981) -----79, 113, 159, 219, 238
Harris, Y. George, 60 IBLA 366 (Dec. 22, 1981) -----205, 211	Hester, Ben, 58 IBLA 163 (Sept. 28, 1981) -----73, 80, 114, 151
Hartley, Esdras K., 54 IBLA 38 (Apr. 9, 1981), 88 I.D. 437 -----187, 189, 195, 207, 217, 258	Higbee, Ernest, <u>et al.</u> , 60 IBLA 267 (Dec. 17, 1981) -----139, 144
57 IBLA 293 (Aug. 31, 1981) ----35, 163, 189, 207	Higbee, Ernest, <u>et al.</u> ; U.S. v., 52 IBLA 83 (Jan. 9, 1981) -----5, 107, 108, 110, 129, 143, 158, 161, 214, 235
58 IBLA 329 (Oct. 16, 1981) -----197, 216	Hiko Bell Mining & Oil Co., 55 IBLA 324 (June 26, 1981) -----14, 36, 37, 58, 234
Hartley, Esdras K., Impel Energy Corp., 57 IBLA 319 (Sept. 1, 1981) -----54, 189, 196, 256	Hill, Don W., Sr., Lois Sallee Kelso Shrode, 58 IBLA 103 (Sept. 24, 1981) -----3, 98
Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981) -----5, 40, 59, 71, 79, 113, 239	Hills, Harry S., <u>et al.</u> , 59 IBLA 241 (Oct. 28, 1981) -----169, 171, 176, 181, 260
Haskins, Richard P.; U.S. v., 59 IBLA 1 (Oct. 21, 1981), 88 I.D. 925 -----3, 6, 7, 85, 119, 125, 137, 141, 142, 143, 144, 157, 226	Hodges, Sidney, John Golden, 55 IBLA 17 (May 26, 1981) -----79, 113, 159, 218, 238
Hastings, Merrill G., 60 IBLA 54 (Nov. 17, 1981) -----32, 91, 228, 255	Hoerning, Lucille S., 57 IBLA 74 (Aug. 20, 1981) -----67, 236
Hauger, Michael, 52 IBLA 129 (Jan. 16, 1981) -----68, 111, 120	Hoffman, Donald L., 58 IBLA 327 (Oct. 16, 1981) -----80, 114
Havlah Group, 60 IBLA 349 (Dec. 22, 1981), 88 I.D. 1115 -----92, 111	Holecek, Jean (Mrs.), Uniform Relocation Assistance Appeal of, 4 OHA 123 (Feb. 20, 1981) -----253
Hawes, Alfred N., <u>et al.</u> , Estate of; U.S. v., 52 IBLA 164 (Jan. 21, 1981) -----132	Holland Livestock Ranch & John J. Casey, 52 IBLA 326 (Feb. 19, 1981), 88 I.D. 275 -----10, 12, 13, 57, 58, 60, 95, 250
Healy, Kelly R., 60 IBLA 115 (Nov. 20, 1981) -----157, 259	Holland Livestock Ranch & John J. Casey; Bureau of Land Manage- ment v., 54 IBLA 247 (Apr. 27, 1981) -----11, 12, 13, 15, 58, 60, 94, 95
Heath, Lee R., 60 IBLA 171 (Nov. 24, 1981) -----81, 114	Home Petroleum Corp. <u>et al.</u> , 54 IBLA 194 (Apr. 23, 1981), 88 I.D. 479 -----55, 56, 62, 164, 173, 180, 182, 184, 186, 191, 198
Hedrick, Avo B. Hart, 55 IBLA 143 (June 4, 1981) -----2, 98	Homer, City of, 6 ANCAB 203 (Nov. 30, 1981), 88 I.D. 1047 -----25
Heidelberg Silver Mining Co., Inc., 58 IBLA 10 (Sept. 16, 1981) -----65, 80, 114, 155	Hoover & Bracken Energies, Inc., 52 IBLA 27 (Jan. 5, 1981), 88 I.D. 7 -----206
Heinze, W. O., 60 IBLA 78 (Nov. 19, 1981) -----81, 114	Horn Silver Mines Co., Inc., 60 IBLA 107 (Nov. 20, 1981) -----178, 193
Heirs of Carson, Raymond D., <u>et al.</u> , 58 IBLA 265 (Oct. 7, 1981) -----74, 80, 114, 160, 219, 239	Houser, Howard F., 57 IBLA 27 (Aug. 6, 1981) -----80, 113
Heirs of Paneak, Simon, 55 IBLA 305 (June 25, 1981) -----17, 96, 107, 234	
Henkins, Dale E., 52 IBLA 9 (Jan. 5, 1981) -----68, 77, 145, 159, 218	

<u>Page(s)</u>	<u>Page(s)</u>
Howard, W. Keith, 53 IBLA 92 (Mar. 2, 1981), 88 I.D. 341 -----159, 170, 172, 218, 238	Jardine, Donald, 58 IBLA 49 (Sept. 21, 1981) -----84, 118, 160, 219, 239
Howe, Grant, 56 IBLA 145 (July 20, 1981) -----38	Jeff Co., 61 IBLA 74 (Dec. 31 1981) -----162, 176, 193, 220
Howell, Corinne Mae & Her Minor Children, Gary Arnold, Richard Dewayne, & Darcy Lynn Howell v. U.S., 9 IBIA 3 (June 11, 1981), 88 I.D. 575 -----27, 105	Jewell, John W., 53 IBLA 179 (Mar. 16, 1981) -----108, 110
9 IBIA 70 (Sept. 9, 1981), 88 I.D. 822 -----6, 27, 105	J.F.C. Oil & Gas, 60 IBLA 191 (Nov. 27, 1981) -----162, 176
Huebert, Jake, 59 IBLA 179 (Oct. 27, 1981) -----167, 170	Jibilian, Theresa, 57 IBLA 354 (Sept. 8, 1981) -----59, 198, 204
Huger, Killian L., Jr., 52 IBLA 174 (Jan. 26, 1981) -----6, 30, 163, 169, 171, 220	Johansen, Daniel (On Reconsid- eration), 54 IBLA 295 (Apr. 29, 1981) -----8, 13, 17, 19, 95, 233
Hunt, W. H., 55 IBLA 14 (May 26, 1981) -----93, 94	Johnson, George, Jessie Johnson Picker, Reinhold R. & Howard W. Johnson, Uniform Relocation Assistance Appeal of, 4 OHA 153 (Apr. 13, 1981) -----252
Husky Oil Co., Pan Eastern Exploration Co., 52 IBLA 41 (Jan. 6, 1981) -----183, 185	Johnson, Hugh A., 54 IBLA 144 (Apr. 17, 1981) -----5, 13, 40, 41, 68, 233, 239
Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981) -----55, 56, 62, 165, 173, 180, 182, 184, 186, 191, 198	Johnson, Perry L., et al., 57 IBLA 20 (Aug. 6, 1981) -----65, 72
Inspiration Development Co., 54 IBLA 390 (May 20, 1981), 88 I.D. 557 -----82, 116, 147	Johnson, Ronald W., 3 IBSMA 118 (Apr. 27, 1981), 88 I.D. 495 -----245, 247
Intermountain Exploration Co., 57 IBLA 271 (Aug. 31, 1981) -----80, 114, 160, 219, 238	Johnson, Scott; U.S. v., 59 IBLA 207 (Oct. 27, 1981) -----10, 129, 132, 135
57 IBLA 274 (Aug. 31, 1981) -----80, 114, 160, 219, 238	Johnson, William M., 3 IBSMA 377 (Dec. 18, 1981), 88 I.D. 1112 -----245
International Resource Enter- prises, Inc., 55 IBLA 386 (June 30, 1981) -----201, 209	Johnsonius & Sons, Inc., Appeal of, IBCA-1345-4-80 (Feb. 25, 1981) -----48
IRT Corp., Appeal of, IBCA- 1347-4-80 (Sept. 25, 1981), 88 I.D. 877 -----42	Johnston, Virginia M., 57 IBLA 392 (Sept. 10, 1981) -----80, 114
Isaac, Roselyn (On Recon- sideration), 53 IBLA 306 (Mar. 25, 1981) -----8, 13, 16, 95, 233	Journigan, Russell & Lena; U.S. v., 59 IBLA 393 (Nov. 10, 1981) -----10, 129
Island Creek Coal Co., 3 IBSMA 165 (June 15, 1981), 88 I.D. 581 -----243, 244	Joyce, James V. (On Reconsidera- tion), 56 IBLA 327 (July 30, 1981) -----65, 123
3 IBSMA 383 (Dec. 23, 1981), 88 I.D. 1122 -----245, 248	J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981) -----33, 107, 108, 216
Isthmus Refining Corp., 60 IBLA 331 (Dec. 22, 1981) -----187, 213	Juneau Area Acting Director, Bureau of Indian Affairs, & Arctic John Etalook; State of Alaska v., 9 IBIA 126 (Nov. 9, 1981), 88 I.D. 1020 -----99
Jackson, Leo D., et al.; U.S. v., 53 IBLA 289 (Mar. 24, 1981) -----6, 11, 13, 55, 56, 62, 110, 127, 130, 133, 136, 140, 156, 257, 258	Kaguyak, Inc., 5 ANCAB 257 (Apr. 21, 1981) -----22

Table of Decisions Reported

	Page(s)		Page(s)
Karis Oil Co., Inc., 58 IBLA 123 (Sept. 24, 1981) -----	183, 185	Koenigsmark, Paul M., <u>et al.</u> ; U.S. <u>v.</u> , 53 IBLA 377 (Mar. 31, 1981) -----	79, 112, 121, 147
Karlson, Vivian Sullivan, 60 IBLA 10 (Nov. 13, 1981) -----	64, 86, 153, 160, 219, 239	Konukpeak, Nora E. (On Recon- sideration), 60 IBLA 394 (Dec. 23, 1981) -----	17
Kasamis, Andrew, 56 IBLA 332 (July 30, 1981) -----	70, 147	Kordick & Son, Inc., & Steve P. Rados, Inc. (A Joint Venture), Appeal of, IBCA-1255-3-79 (Aug. 27, 1981), 88 I.D. 798 -----	49, 50
Kaser, Bill, 57 IBLA 51 (Aug. 17, 1981) -----	80, 113	Kreider, Abram H., 57 IBLA 68 (Aug. 18, 1981) -----	83, 117, 141, 150, 159, 161, 220, 239
Keating, Ralph W. M., 55 IBLA 113 (June 3, 1981) -----	200, 209	Kremiller, Earl, 55 IBLA 28 (May 27, 1981) -----	79, 113, 122, 159, 219, 238
Keating, Thomas F., 53 IBLA 349 (Mar. 30, 1981) -----	164, 179, 204	Kretschmer, F. J., 59 IBLA 115 (Oct. 26, 1981) -----	175, 178
Keith, Lynn, 53 IBLA 192 (Mar. 17, 1981), 88 I.D. 369 -----	5, 8, 40, 55, 57, 59, 62, 69, 81, 115, 146	Kroetch, William J., 57 IBLA 29 (Aug. 6, 1981) -----	72, 80, 113, 149
Kelley, Edward, 59 IBLA 250 (Oct. 29, 1981) -----	75, 119	Kuhn, John R., 58 IBLA 316 (Oct. 16, 1981) -----	80, 114
Kelley, Judy & George, 58 IBLA 369 (Oct. 20, 1981) -----	80, 114, 124	Kulin, Phillip A., 53 IBLA 57 (Feb. 27, 1981) -----	164, 170, 172, 180, 191, 235
Kelly, Andrew R., <u>et al.</u> , 57 IBLA 71 (Aug. 20, 1981) -----	196	Kuretich, Michael, <u>et al.</u> ; U.S. <u>v.</u> , 54 IBLA 124 (Apr. 17, 1981) -----	13, 106, 110, 128, 130, 134, 141, 142, 229
Keough, Robert, 54 IBLA 337 (May 5, 1981) -----	70, 116, 122	Kurtz, Harold E., Jr., 59 IBLA 387 (Nov. 10, 1981) -----	202, 205
Ketchikan Public Utilities, 5 ANCAB 279 (Apr. 30, 1981) -----	22	Kuykendall, Marlin D. v. Comm'r of Indian Affairs & Yavapai- Prescott Tribe, 9 IBIA 90 (Oct. 23, 1981) -----	34, 230
Kincanon, Estella M., <u>et al.</u> ; U.S. <u>v.</u> , 54 IBLA 95 (Apr. 15, 1981) -----	126, 130, 136, 249	Laeser, Carolyn W., 53 IBLA 336 (Mar. 26, 1981) -----	170, 172
King of the Hills Mining Co., 56 IBLA 107 (July 16, 1981) -----	79, 113	Lake Coal Co., Inc., 3 IBSMA 9 (Feb. 17, 1981), 88 I.D. 266 -----	240, 243
King Quarries, Inc., 3 IBSMA 357 (Sept. 29, 1981), 88 I.D. 892 -----	246, 249	Lakich, George I., 56 IBLA 148 (July 20, 1981) -----	79, 113, 122
Kirkham, Grant & Roberta, 58 IBLA 131 (Sept. 24, 1981) -----	5, 62, 80, 114, 160, 219, 239	Lamoureux, L. D., 56 IBLA 298 (July 28, 1981) -----	79, 113, 123
Kirley, Howard L., 55 IBLA 165 (June 9, 1981) -----	79, 113	Landis, Ilean M., 59 IBLA 353 (Nov. 9, 1981) -----	41, 96, 176, 181, 235, 261
Knight, Dana A., Estate of, 9 IBIA 82 (Oct. 22, 1981), 88 I.D. 987 -----	100	Landis, Vickie J., 54 IBLA 25 (Apr. 6, 1981) -----	173, 180, 260
Knight, Jesse H., 53 IBLA 300 (Mar. 24, 1981) -----	8, 13, 33, 35, 36, 220, 233	Lane County Audubon Society, 55 IBLA 171 (June 11, 1981) -----	8, 221, 250
Kobbeman, Clyde K., 58 IBLA 268 (Oct. 8, 1981), 88 I.D. 915 -----	6, 57, 106, 168, 171	Lane, Dennis A., 56 IBLA 171 (July 20, 1981) -----	71, 148
Kodiak, City of, 5 ANCAB 297 (May 13, 1981) -----	22		
Kodiak Island Borough, 6 ANCAB 93 (Sept. 28, 1981) -----	23		

	Page(s)		Page(s)
Lang, Robert O. & Joanne M., Uniform Relocation Assistance Appeal of, 4 OHA 131 (Mar. 12, 1981) -----	253	Luke, Clyde W. & Betty J., 53 IBLA 136 (Mar. 9, 1981) -----	78, 159, 218
Laue, Hellmut, Arthur J. Devine, 59 IBLA 316 (Nov. 4, 1981) -----	81, 114, 125	Luke, Louise (On Reconsidera- tion), 60 IBLA 399 (Dec. 28, 1981) -----	17
Lauler, Lorraine (Trust), 52 IBLA 227 (Jan. 30, 1981) -----	89, 218	Lumpmouth, Thomas Elward, Estate of, 8 IBIA 275 (Apr. 15, 1981) -----	101, 102, 105
Law, W. LeGrande, 55 IBLA 193 (June 16, 1981) -----	79, 113, 160, 219, 238	Lundgren, Leonard, 53 IBLA 149 (Mar. 11, 1981) -----	93, 94
Lawrence, Ida, 5 ANCAB 304 (May 29, 1981) -----	22	Lyman Mining Co., 54 IBLA 165 (Apr. 21, 1981) -----	56, 62, 79, 113
Learned, Lester L., 54 IBLA 147 (Apr. 17, 1981) -----	64, 81, 147	Lynn, Robert G., 60 IBLA 117 (Nov. 24, 1981) -----	161, 188, 194, 198, 199
Leaumont, Richard J., 54 IBLA 242 (Apr. 27, 1981), 88 I.D. 490 -----	8, 9, 30, 90, 255	Lynn, Tommy L., 60 IBLA 47 (Nov. 17, 1981) -----	9, 10, 12, 178
Leavitt, Vaughn K., et al., 55 IBLA 59 (May 29, 1981) -----	32, 258, 260	MacDonald, Ariel C., et al., 52 IBLA 384 (Feb. 19, 1981) -----	138
Ledbetter, Jerald D., 56 IBLA 84 (July 15, 1981) -----	79, 113	Mackenzie, Kathryn, 58 IBLA 64 (Sept. 22, 1981) -----	80, 114, 123, 160, 219, 239
Leeds, Harold R., 60 IBLA 383 (Dec. 23, 1981) -----	162, 187, 190	McCarley, Jack, 58 IBLA 239 (Oct. 6, 1981) -----	65, 72, 123
LeFaivre, Robert C., 59 IBLA 220 (Oct. 28, 1981) -----	80, 114	McCarroll, H. L., 55 IBLA 215 (June 18, 1981) -----	166, 174
Lewis, Malin W.; U.S. v., 58 IBLA 282 (Oct. 8, 1981) -----	15, 129, 132, 138, 232	McClung, Herbert S., 55 IBLA 260 (June 25, 1981) -----	79, 113
Lewis, Max B., 56 IBLA 293 (July 28, 1981) -----	54, 207	McCool, Raymond N., Harold P. Hinds, 60 IBLA 62 (Nov. 19, 1981) -----	86, 118, 145
Lindgren, Sarah F. (On Recon- sideration), 54 IBLA 181 (Apr. 22, 1981) -----	17	McCormack, Sam, 52 IBLA 56 (Jan. 6, 1981) -----	87, 92, 138, 257, 259
Little Byrd Coal Co., Inc., 3 IBMA 136 (Apr. 30, 1981), 88 I.D. 503 -----	240, 243	McCutcheon-Peterson (JV), Appeal of, IBCA-1392-9-80 (Mar. 12, 1981), 88 I.D. 361 -----	43, 45, 229
Little, Lawson (Mr.), Uniform Relocation Assistance Appeal of, 4 OHA 156 (Apr. 17, 1981) -----	252	McDonald, Richard E., Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981) -----	55, 56, 62, 166, 180, 191
Livermore, Keith B., 59 IBLA 232 (Oct. 28, 1981) -----	176, 205	McDowell, John; U.S. v., 53 IBLA 270 (Mar. 24, 1981) -----	11, 133, 136
Lochner, Floyd O., 56 IBLA 271 (July 28, 1981) -----	55, 56, 62, 167, 180, 192	McDowell, John & Miguel Nunez; U.S. v., 56 IBLA 100 (July 15, 1981) -----	12, 58, 61, 134
Long, Verne G., 57 IBLA 263 (Aug. 28, 1981) -----	80, 113, 123, 216	McFall, Doris & Donald & Clarence Duncan, 55 IBLA 110 (June 1, 1981) -----	79, 122
Lowe, Charles M., et al., 55 IBLA 384 (June 29, 1981) -----	79, 113	McGarva, Jacqueline L., Cal-Neva Willow Creek Range Improvement Ass'n, 60 IBLA 278 (Dec. 17, 1981) -----	91, 255
Lowenstein, Larry L., 57 IBLA 95 (Aug. 25, 1981) -----	16, 55, 161	McGhee, Eva, William J. Bott, 55 IBLA 292 (June 26, 1981) -----	1, 162
Lowmaster, Deborah, 52 IBLA 198 (Jan. 26, 1981) -----	16, 97, 257, 260		

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
McGowan, Charles W., III, 54 IBLA		Mascot Silver-Lead Mines, Inc.,	
119 (Apr. 16, 1981) -----	79, 112, 159, 218, 238	54 IBLA 121 (Apr. 16, 1981) -----	79, 113, 122, 159, 218, 238
McKay, Roy L., 57 IBLA 401		Matchett, A. D., 56 IBLA 231	
(Sept. 14, 1981) -----	162, 188, 194, 198, 199, 204	(July 22, 1981) -----	167, 185, 186, 192, 197
McKinney, Wanda Lois Lee, et al.,		Mativo, Susan, 52 IBLA 134	
53 IBLA 279 (Mar. 24, 1981) -----	32, 35, 97, 217, 228, 236	(Jan. 16, 1981) -----	77, 89, 112, 145
McLean, Lawrence S., 60 IBLA 65		Matthews, Guy A., 58 IBLA 246	
(Nov. 19, 1981) -----	81, 114, 123	(Oct. 6, 1981) -----	5, 14, 15, 32, 40, 73, 85, 118, 151, 158, 229
McMahon, George Vincent, 60 IBLA		Mattler, Martin, 53 IBLA 323	
187 (Nov. 27, 1981) -----	76, 81, 118, 154	(Mar. 26, 1981), 88 I.D. 420 -----	200, 209
McMahon, Regina, 56 IBLA 372		Maurer, A. J., Jr., 61 IBLA 39	
(Aug. 3, 1981) -----	71, 149	(Dec. 31, 1981) -----	111, 126
McNally, Edward, Merrill Porter,		Mayer, Juanita H., 60 IBLA 391	
56 IBLA 177 (July 20, 1981) -----	71, 148	(Dec. 23, 1981) -----	169, 195, 198
Magic Valley Trail Machine Ass'n,		Mayers, Frank K., 53 IBLA 53	
Inc., 57 IBLA 284 (Aug. 31, 1981) ----	10, 67, 217	(Feb. 27, 1981) -----	170, 172
Maguire, Joan S., 59 IBLA 130		M.D.C., Inc., 57 IBLA 35	
(Oct. 26, 1981) -----	167, 175, 193	(Aug. 10, 1981) -----	80, 113, 123
Manga, Joseph C., 5 ANCAB 343		Mealue, Michael J., 58 IBLA 35	
(June 26, 1981) -----	21, 24, 26, 28	(Sept. 17, 1981) -----	80, 114, 124
6 ANCAB 147 (Nov. 27, 1981) -----	23	Mechaneer, Inc., Appeal of,	
Manga, Joseph C., et al., 5 ANCAB		IBCA-1362-6-80 (Apr. 8, 1981) -----	48
224 (Apr. 20, 1981), 88 I.D. 460 -----	24, 26, 28	Medicinebird, Homer James, Estate	
6 ANCAB 136 (Oct. 26, 1981) -----	22	of, 8 IBIA 289 (May 21, 1981) -----	104
Mann Construction Co., Inc.,		Meeks, Richard M. (Mr.), Uniform	
Appeal of, IBCA-1280-7-79		Relocation Assistance Appeal of,	
(Dec. 10, 1981), 88 I.D. 1065 -----	48, 50	4 OHA 173 (July 13, 1981) -----	252
Mann, Wayne M., 54 IBLA 8		4 OHA 196 (Oct. 13, 1981) -----	251
(Apr. 6, 1981) -----	13, 41, 110, 137, 155, 156, 233, 259	Melart, Inc., 52 IBLA 5	
Manning, Alfred v. Comm'r of		(Jan. 5, 1981) -----	77, 144, 159, 218
Indian Affairs, 9 IBIA 36		Melcher, Robert B., 56 IBLA 165	
(July 10, 1981) -----	100, 104	(July 20, 1981) -----	71, 148
Marcinko, Edward, 56 IBLA 289		Menominee Tribal Enterprises v.	
(July 28, 1981) -----	167, 170	Acting Deputy Comm'r of Indian	
Marco, Inc., 3 IBSMA 128		Affairs, 9 IBIA 141 (Dec. 22, 1981) -----	99
(Apr. 27, 1981), 88 I.D. 500 -----	244, 246	Messbauer, Arthur J., 59 IBLA 173	
Mardam Exploration, Inc., 52 IBLA		(Oct. 26, 1981) -----	170, 172
296 (Feb. 9, 1981) -----	35, 109, 206	Messinger, John L., Norris C.	
Marshall, Rolland, 56 IBLA 187		Delamore, Jr., 56 IBLA 1	
(July 20, 1981) -----	79, 113, 123, 160, 219, 238	(June 30, 1981) -----	1, 174, 177, 221
Martensen, Ben & Anne,		Metro Energy, Inc., 52 IBLA 369	
Will Halstead, 52 IBLA 253		(Feb. 19, 1981) -----	32, 56, 59, 60, 176, 179
(Feb. 6, 1981) -----	78, 112, 146	Metz, George W., 56 IBLA 97	
Martin K. Eby Construction Co.,		(July 15, 1981) -----	1, 174, 177, 221
Inc., Appeal of, IBCA-1380-8-80		Meyer, Anton J., 59 IBLA 311	
(Feb. 19, 1981) -----	44, 48	(Nov. 4, 1981) -----	81, 114, 125, 160, 219, 239
IBCA-1389-9-80 (Apr. 8,			
1981) 88 I.D. 431 -----	43, 45, 228, 230		

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Meyer, J. Eugene, 57 IBLA 124 (Aug. 25, 1981) -----	170, 172	Morgan, Teddy W., 59 IBLA 153 (Oct. 26, 1981) -----	80, 114
Michigan Wisconsin Pipeline Co., Inc., 54 IBLA 190 (Apr. 22, 1981) -----	206	Morrill, George D., H. Grant Noble, 58 IBLA 211 (Sept. 29, 1981) -----	80, 114
Mid-America Refining Co., 61 IBLA 84 (Dec. 31, 1981) -----	188, 213	Morrisroe, Michael, Jr., 56 IBLA 49 (July 8, 1981) -----	201, 209
Mike, Stanislaus, 56 IBLA 69 (July 10, 1981) -----	9, 14, 18, 96, 234	Moses, Beulah (On Reconsidera- tion), 60 IBLA 252 (Dec. 4, 1981) -----	17
Miller, Edward C., 56 IBLA 388 (Aug. 3, 1981) -----	66, 89, 221	Motes, John T. & Marie, 58 IBLA 62 (Sept. 21, 1981) -----	73, 118
Miller, Eloise & David, 56 IBLA 7 (June 30, 1981) -----	1, 92, 162, 166, 174, 177	Mountain Enterprises Coal Co., 3 IB SMA 338 (Sept. 25, 1981), 88 I.D. 861 -----	57, 242, 245, 247
Miller, Jesse L., 54 IBLA 187 (Apr. 22, 1981) -----	1, 82, 147	Mountain States Telephone & Telegraph Co., 60 IBLA 221 (Nov. 30, 1981) -----	15, 33, 40, 89, 96, 221, 223
Miller, Roy M., Jr., 52 IBLA 52 (Jan. 6, 1981) -----	32, 97	Mull, Ervin D., Paul Eichholz, 57 IBLA 278 (Aug. 31, 1981) -----	72, 124
Milton, Robert G., 60 IBLA 104 (Nov. 20, 1981) -----	75, 86, 153, 160, 219, 239	Muniz, Randolph G. (Mrs.), 54 IBLA 237 (Apr. 27, 1981) -----	79, 113
Milton, William, Jr., Cordell Eldon Eugene & Myrna June Morgan, Jackie Lavern Jarman, 59 IBLA 182 (Oct. 27, 1981) -----	3, 35, 98, 217, 236, 259	Murer, Christian F., 57 IBLA 333 (Sept. 1, 1981) -----	33, 107, 215
Minium, Jess E., Jr., 54 IBLA 134 (Apr. 17, 1981) -----	70, 81, 115	Murphy, John, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981) -----	5, 8, 14, 40, 41, 57, 59, 63, 66, 73, 118, 137, 151, 239
Minkler, F. C., III, F. C. Minkler, M.D., 59 IBLA 203 (Oct. 27, 1981) -----	181	Naas, Richard E. & Gloria M., Michael D. & Echo Ayoob, 57 IBLA 266 (Aug. 28, 1981) -----	83, 150
Mi-Oro Mining Co., 56 IBLA 179 (July 20, 1981) -----	71, 149	National Outdoor Coalition, 59 IBLA 291 (Oct. 30, 1981) -----	66, 90, 255
Miskoff, Steven V., 58 IBLA 32 (Sept. 16, 1981) -----	80, 114, 160, 219, 239	Natural Gas Corp. of California, 59 IBLA 348 (Nov. 5, 1981) -----	187, 189
Mitchell, Susan E., 53 IBLA 42 (Feb. 26, 1981) -----	156, 259	Nekoosa Contracting Corp., Appeal of, IBCA-1408-11-80 (June 30, 1981) -----	44, 46, 47, 49
Modoc Gem & Mineral Society, 58 IBLA 142 (Sept. 25, 1981) -----	85, 151	Nelbro Packing Co., 5 ANCAB 174 (Mar. 9, 1981), 88 I.D. 352 -----	20, 23, 26
Monroe, Robert R., Estate of, 9 IBIA 67 (Sept. 3, 1981) -----	101	Nelson, Andrew H., 58 IBLA 220 (Sept. 30, 1981) -----	58, 201, 204, 210
Montana Bank (Trustee), 54 IBLA 359 (May 18, 1981) -----	183	Nelson, Janie S., Terry L. Sullivan, 55 IBLA 289 (June 25, 1981) -----	82, 140, 148
Monte, Timothy Edward, 56 IBLA 315 (July 29, 1981) -----	80, 113, 123, 160, 219, 238	Nelson, Loren, 56 IBLA 352 (Aug. 3, 1981) -----	80, 113
Moody, Floyd R., 52 IBLA 153 (Jan. 21, 1981) -----	77, 89, 145	Nequoia Ass'n, 60 IBLA 386 (Dec. 23, 1981) -----	31, 228, 231
Moon, Norman L., 57 IBLA 1 (Aug. 5, 1981) -----	80, 113, 160, 219, 238		

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Nero & Associates, Inc., Appeal of, IBCA-1292-8-79 (Feb. 19, 1981), 88 I.D. 304	43, 45, 46, 48, 49, 50	Nyce, Ray, 58 IBLA 192 (Sept. 29, 1981)	80, 114
Newby, Nicolaus P., 60 IBLA 264 (Dec. 15, 1981)	87, 118, 154	OA0 Corp., Appeal of, IBCA-1427- 1-81 (Sept. 15, 1981)	47
Newman, Dave R., 57 IBLA 23 (Aug. 6, 1981)	65, 80, 113, 123, 142, 160, 219, 238	Oberbillig, Harlow H., 57 IBLA 336 (Sept. 1, 1981)	106, 117, 142, 150
New Mexico Broadcasting Co., 60 IBLA 163 (Nov. 24, 1981)	88, 222	Office of Surface Mining Reclama- tion & Enforcement; Council of the Southern Mountains, Inc. v., 3 IBSMA 44 (Mar. 23, 1981), 88 I.D. 394	242
Newsom, Lee R., 58 IBLA 325 (Oct. 16, 1981)	80, 114, 160, 219, 239	O'Hara, Keith R., 58 IBLA 59 (Sept. 21, 1981)	65, 80, 114, 142
Nielsen, D. L., R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)	83, 89, 117, 141, 150, 160, 220	Ojurovich, Joseph, 54 IBLA 100 (Apr. 15, 1981)	79, 112, 121, 159, 218, 238
Niernberger, Barbara J., Thomas H. Connelly, 53 IBLA 112 (Mar. 4, 1981), 88 I.D. 347	182, 191, 197, 212	55 IBLA 182 (June 15, 1981)	79, 113, 160, 219, 238
N. L. Baroid Petroleum Services, 60 IBLA 90 (Nov. 19, 1981)	66, 81, 114, 125	Old Home Manor, Inc., 3 IBSMA 241 (Aug. 13, 1981), 88 I.D. 737	240, 242, 247
Nordmark, Patricia & William, 6 ANCAB 157 (Nov. 30, 1981), 88 I.D. 1028	25, 27, 28	Omco, Inc., 55 IBLA 77 (June 1, 1981)	82, 116, 122, 148
Northern Stone Supply, 61 IBLA 36 (Dec. 29, 1981)	76, 120, 126, 154	Ondreako, Janice Fay, I. D. Monaghan, 53 IBLA 128 (Mar. 5, 1981)	69, 114, 121
Northway Natives, Inc., 5 ANCAB 147 (Jan. 5, 1981), 88 I.D. 14	21, 24	Oneida Perlite Corp; U.S. v., 57 IBLA 167 (Aug. 27, 1981), 88 I.D. 772	7, 10, 30, 128, 137, 226
5 ANCAB 168 (Feb. 26, 1981)	22	Ore, Clarence C., et al., 4 OHA 125 (Feb. 24, 1981)	106
6 ANCAB 1 (Aug. 5, 1981), 88 I.D. 711	18, 20, 21, 23, 29	Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981), 88 I.D. 760	20, 21, 25, 26, 29, 131, 143, 220
Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981), 88 I.D. 31	4, 12, 40, 138, 155, 228, 229, 236, 257, 260	Orme, Claude T. & Sarah E.; U.S. v., 57 IBLA 373 (Sept. 8, 1981)	14, 96, 129, 132, 135, 232, 234
Noss, J. L. & Mary F.; U.S. v., 54 IBLA 355 (May 12, 1981)	11, 57, 96, 128, 133, 137	Osborn, Lloyd J., P.G.C.S., Ltd., 59 IBLA 323 (Nov. 5, 1981)	81, 114, 123
Novotny, Alvyn G., 55 IBLA 196 (June 16, 1981)	165, 170, 177	Osmer, Louis L., Jr., et al., 56 IBLA 30 (July 8, 1981)	106, 142
Noyce, Leon & Thomas Rokita; U.S. v., 59 IBLA 268 (Oct. 29, 1981)	41, 58, 111, 129, 132, 135, 138, 141, 157	Otani, Nancy Y., 58 IBLA 38 (Sept. 17, 1981)	175
Nugget Oil Corp., 61 IBLA 43 (Dec. 31, 1981)	190, 197, 256	Otis Energy, Inc., 52 IBLA 316 (Feb. 19, 1981)	203, 208
Nunez, Miguel; U.S. v., 59 IBLA 134 (Oct. 26, 1981)	129, 135	Overthrust Oil & Gas Corp., 52 IBLA 119 (Jan. 13, 1981), 88 I.D. 38	199, 203, 208, 219

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Oxy Petroleum, Inc., 52 IBLA 239 (Feb. 6, 1981) -----1, 172, 176	Pendleton, Ed, 57 IBLA 146 (Aug. 25, 1981) -----2, 110, 159, 163, 196
Pacific Coast Mines, Inc., 53 IBLA 200 (Mar. 17, 1981) -----69, 115	Pern, L. M., 57 IBLA 339 (Sept. 1, 1981) -----72, 160, 219, 238
Pacific Transmission Supply Co. & Raymond Chorney, 53 IBLA 204 (Mar. 18, 1981) -----190, 208	Peterson, Margaret E., 55 IBLA 136 (June 4, 1981) -----56, 70, 82, 92, 116, 148, 160, 219, 238
Packard, Bernard E., et al., 58 IBLA 308 (Oct. 16, 1981) -----74, 119, 124, 160, 219, 239	Petrolero Corp., 60 IBLA 21 (Nov. 16, 1981) -----202, 205
Padilla, Cleotilde, 52 IBLA 248 (Feb. 6, 1981) -----214	Petroleum Shares, Inc., 53 IBLA 254 (Mar. 19, 1981) -----164, 172
Paglee, M. Robert, 59 IBLA 192 (Oct. 27, 1981) -----197, 207, 235	Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981) -----5, 40, 71, 84, 117, 149
Paige, Lowell M., 52 IBLA 137 (Jan. 16, 1981) -----68, 145	Pettigrew, Robert A., 54 IBLA 257 (Apr. 28, 1981) -----139, 144, 158
Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981) -----6, 56, 62, 69, 114, 121	Pettigrew, Robert A.; U.S. v., 54 IBLA 149 (Apr. 17, 1981), 88 I.D. 453 -----144, 155, 158
Paneak, Simon, Heirs of, 55 IBLA 305 (June 25, 1981) -----17, 96, 107, 234	Phillips Construction Co., Appeals of, IBCA-1295-8- 79 & 1296-8-79 (July 31, 1981), 88 I.D. 689 -----47, 50, 51, 52
Papaeliou, Junerwanda J., Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981) -----60, 76, 86, 126, 154	Pierce Coal & Construction, Inc., 3 IBSMA 350 (Sept. 25, 1981), 88 I.D. 867 -----246
Parish Chemical Co., 57 IBLA 240 (Aug. 27, 1981) -----83, 117	Pike, Harry J., 57 IBLA 15 (Aug. 6, 1981) -----72, 80, 113, 123
Park City Chief Mining Co., 57 IBLA 342 (Sept. 3, 1981) -----84, 118, 150 57 IBLA 346 (Sept. 3, 1981) -----84, 114, 150	Pinkham, Alex & Mary Anne, 52 IBLA 149 (Jan. 16, 1981) -----5, 55, 62, 68, 112, 145
Pascale, Margaret G., 59 IBLA 124 (Oct. 26, 1981) -----175	Pirtle, Margaret Lee, 54 IBLA 113 (Apr. 16, 1981) -----200, 209
Patten, Lowell L., 52 IBLA 299 (Feb. 10, 1981) -----5, 40, 68, 116, 159, 218, 239 55 IBLA 125 (June 3, 1981) -----82, 147	Pitt, Stephen A., L & P Invest- ments, 57 IBLA 365 (Sept. 8, 1981) -----168, 175, 192
Pauley, James B., 53 IBLA 1 (Feb. 26, 1981) -----15, 32, 78, 146, 158, 160, 219	Placid Oil Co. et al., 58 IBLA 294 (Oct. 14, 1981) -----168, 189
Peabody Coal Co., 53 IBLA 261 (Mar. 23, 1981) -----15, 37, 99, 100	Plater, David D., 55 IBLA 296 (June 26, 1981) -----87
Peabody Coal Co., Inc., 3 IBSMA 32 (Mar. 3, 1981), 88 I.D. 344 -----241, 244	Pleasant, Lillie, et al., 5 ANCAB 195 (Mar. 31, 1981) -----22
Pedersen, Leroy, 56 IBLA 86 (July 15, 1981), 88 I.D. 646 -----108	Plumb, Ralph A., 58 IBLA 254 (Oct. 6, 1981) -----74, 117, 152
Penasco Valley Telephone Coop- erative, Inc., 56 IBLA 360 (June 26, 1981) -----220, 222, 224, 225, 251	Plutt, John, Jr., et al., 53 IBLA 313 (Mar. 25, 1981) -----56, 62, 70, 115, 159, 218, 238

Table of Decisions Reported

	Page(s)		Page(s)
Polar Resources Co., 58 IBLA 70 (Sept. 22, 1981) -----	73, 151	Reavely, William A., <u>et al.</u> ; U.S. v., 53 IBLA 320 (Mar. 25, 1981) -----	30, 228, 230
(On Reconsideration), 57 IBLA 237 (Aug. 27, 1981) -----	80, 113	Reiman, William C., Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981) -----	56, 81, 87, 92, 130, 138, 147, 156, 257, 258, 259
Polashek, D. J.; U.S. v., 57 IBLA 104 (Aug. 25, 1981) -----	12, 128, 131, 135, 157	Reiss, Bruce J., 57 IBLA 152 (Aug. 25, 1981) -----	65, 142
Polk, R. M., Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981) -----	14, 137, 139, 157, 234	Reitz Coal Co., 3 IBSMA 260 (Aug. 20, 1981), 88 I.D. 745 -----	247, 249
Pope, James K., <u>et al.</u> , 55 IBLA 148 (June 8, 1981) -----	79, 113, 122	Resource Service Co., Inc., Grace K. Greco, 55 IBLA 343 (June 26, 1981) -----	55, 56, 62, 164, 180, 191
Potts Stephenson Exploration Co., 60 IBLA 397 (Dec. 28, 1981) -----	109, 197	Reuling, William C., 59 IBLA 226 (Oct. 28, 1981) -----	175, 178, 193
Powell, Ben M., III, 59 IBLA 146 (Oct. 26, 1981) -----	160, 165, 170, 219, 239	Reynolds, Jerry D., 54 IBLA 300 (Apr. 29, 1981) -----	90, 226
Prebelich, James C., 53 IBLA 34 (Feb. 26, 1981) -----	69, 159, 218, 238	Reynolds, Robert T., 61 IBLA 52 (Dec. 31, 1981) -----	61, 77, 154
Priest, W. W., Michael Manduca, 55 IBLA 398 (June 30, 1981) -----	1, 166, 177, 187, 215, 221	Rhoads, Verla, Rene Morgan, 52 IBLA 393 (Feb. 24, 1981) -----	68, 112, 121
Prosser, Dean & Crew, Appeal of, IBCA-1471-6-81 (Aug. 28, 1981), 88 I.D. 809 -----	48, 52, 228, 230	Rice, William Francis, 3 IBSMA 17 (Feb. 19, 1981), 88 I.D. 269 -----	241, 244
Prowell, Virgil & Melinda; U.S. v., 52 IBLA 256 (Feb. 6, 1981) -----	7, 127, 132, 136, 137, 226, 232, 233	Riddlemoser, Jacqueline A., 56 IBLA 173 (July 20, 1981) -----	71, 148
Prudential Mining & Exploration, Inc., 60 IBLA 363 (Dec. 22, 1981) ---	76, 87, 120, 141, 154	Rife, Simon A., 56 IBLA 378 (Aug. 3, 1981) -----	6, 57, 106, 165, 170
Puglis, Olga M., 53 IBLA 55 (Feb. 27, 1981) -----	164, 172	Riggs, Gordon M., 57 IBLA 122 (Aug. 25, 1981) -----	80, 113
Quakenbush, James W., 54 IBLA 155 (Apr. 21, 1981) -----	79, 113, 121, 159, 218, 238	Rightmire, Harl & Jewel, 53 IBLA 125 (Mar. 5, 1981) -----	138, 156, 258
Quitman Refining Co., 57 IBLA 53 (Aug. 17, 1981) -----	32, 187, 213	Ritchie, Mary B., Estate of, 56 IBLA 361 (Aug. 3, 1981) -----	80, 113, 123, 160, 219, 238
Rademacher, H. S., 58 IBLA 152 (Sept. 25, 1981), 88 I.D. 873 -----	60, 61, 80, 114, 124	Robinson, Don E., 57 IBLA 5 (Aug. 5, 1981) -----	83, 113, 149
Ramstad, Stuart Grant, 55 IBLA 223 (June 18, 1981) -----	15, 19, 55, 257	Robinson, James G., <u>et al.</u> , 60 IBLA 134 (Nov. 24, 1981) -----	5, 12, 40, 60, 61, 74, 81, 114, 126, 154, 160, 219, 228, 233, 239
Rayle Coal Co., 3 IBSMA 111 (Apr. 27, 1981), 88 I.D. 492 -----	241, 245, 247, 249	Rocky Mountain Natural Gas Co., Inc., 55 IBLA 3 (May 26, 1981) -----	30, 222, 231
Rayne, Bessie L. & Freddie R., 61 IBLA 55 (Dec. 31, 1981) -----	83, 120	Rodabaugh, H. J., 59 IBLA 286 (Oct. 30, 1981) -----	81, 114
RDM Interests, 57 IBLA 163 (Aug. 27, 1981) -----	4, 7, 161, 196, 206, 222	Rodgers, Janet A., 58 IBLA 275 (Oct. 8, 1981) -----	6, 57, 106, 168, 171

Table of Decisions Reported

	Page(s)		Page(s)
Rodke, Frances H., 53 IBLA 98 (Mar. 4, 1981) -----	163, 188	San Patricio County, 61 IBLA 80 (Dec. 31, 1981) -----	87
Rogers, Buck A., 60 IBLA 59 (Nov. 18, 1981) -----	75, 153	Saragoza, Paula Troester, et al., 53 IBLA 247 (Mar. 19, 1981) -----	41, 79, 112, 143, 159, 218, 238
Romerio, Alberta K., 55 IBLA 140 (June 4, 1981) -----	79, 113, 160, 219, 238	Saubel, Ronald Richard, Estate of, 9 IBIA 94 (Oct. 28, 1981), 88 I.D. 993 -----	103
Ross, Bill C., 54 IBLA 116 (Apr. 16, 1981) -----	79, 112, 159, 218, 238	Save the Glades Committee, 54 IBLA 215 (Apr. 23, 1981) -----	11, 67, 90, 254
Ross Tipple Co., 3 IBSMA 322 (Sept. 24, 1981), 88 I.D. 851 -----	247, 249	Saylor, Dean, 52 IBLA 366 (Feb. 19, 1981) -----	69, 112, 121
Rothschild, Herbert, 59 IBLA 140 (Oct. 26, 1981) -----	168, 171	Schacht, Clayton F., 58 IBLA 137 (Sept. 25, 1981) -----	80, 114
Rouse, Alice W., et al.; U.S. v., 56 IBLA 36 (July 8, 1981) -----	11, 58, 96, 128, 131, 134, 136, 137, 141, 227	Schandelmeier, John, 56 IBLA 284 (July 28, 1981) -----	9, 67, 216
Rowe, Roy, et al., 57 IBLA 136 (Aug. 25, 1981) -----	80, 113	Scher, Patricia K., 59 IBLA 276 (Oct. 29, 1981) -----	53
Rowell, Dean W., 55 IBLA 301 (June 26, 1981) -----	166, 204	Scherbel, Paul N., 58 IBLA 52 (Sept. 21, 1981) -----	250
Rudisill, Stephen G. & Evelyn J., 56 IBLA 158 (July 20, 1981) -----	79, 113, 160, 219, 238	Schiff, Frank S., 58 IBLA 355 (Oct. 20, 1981) -----	80, 114
Rupp, Del, 57 IBLA 297 (Aug. 31, 1981) -----	5, 62, 80, 114, 148, 160, 219, 238	Schindler, William I., 54 IBLA 221 (Apr. 23, 1981) -----	79, 113, 159, 218, 238
Russell Prater Land Co., Inc., 3 IBSMA 124 (Apr. 27, 1981), 88 I.D. 498 -----	241	Schivo, Walter, 53 IBLA 40 (Feb. 26, 1981) -----	79, 146
Rydzewski, Charles J., 55 IBLA 373 (June 29, 1981), 88 I.D. 625 -----	1, 174, 177, 221	Schlicher, Frederick J., 54 IBLA 61 (Apr. 10, 1981) -----	182, 184
Sachen, Alex, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981) -----	55, 56, 63, 167, 180, 192	Schwab, Charles M., 55 IBLA 8 (May 26, 1981) -----	38, 39
Safford Marine Inc., Uniform Relocation Assistance Appeal of, 4 OHA 211 (Nov. 24, 1981) -----	252	Scona, Inc., Appeal of, IBCA- 1094-1-76 (June 16, 1981), 88 I.D. 590 -----	48, 59, 61
Sahara Coal Co., 3 IBSMA 371 (Nov. 30, 1981), 88 I.D. 1025 -----	243, 246	Scott, Paul R. & Betty F., 53 IBLA 75 (Mar. 2, 1981) -----	79, 112, 155, 250
(Decisions starting with Saint (St.) see beginning of St's)		Seemann, John L., 5 ANCAB 290 (May 11, 1981) -----	24, 26
Salois, Lenore v. Area Director, Billings Area Office, 8 IBIA 283 (May 15, 1981) -----	34, 106	Seldo Co., Inc., d.b.a. Desert Materials Co., Appeal of, IBCA-1194-5-78 (Sept. 30, 1981), 88 I.D. 895 -----	46, 47, 50
Samson Resources Co., 55 IBLA 51 (May 29, 1981) -----	99, 186, 196	Semanko, Robert, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981) -----	55, 56, 63, 167, 180, 192
Samuelson, Agnes S., 56 IBLA 242 (July 22, 1981), 88 I.D. 663 -----	18, 238	Shale Development Corp., Appeal of, IBCA-1256-3-79 (May 18, 1981) -----	42, 46
		Shaner, Kathy, 57 IBLA 349 (Sept. 8, 1981) -----	80, 114

Table of Decisions Reported

	<u>Page(s)</u>	<u>Page(s)</u>
Shannon, C. B., 55 IBLA 312 (June 26, 1981) -----	82, 140, 148, 260	
Sharp, Louis E., 59 IBLA 223 (Oct. 28, 1981) -----	73, 80, 114, 151	
Shell Oil Co., 52 IBLA 15 (Jan. 5, 1981), 88 I.D. 1 -----	206, 213	
52 IBLA 74 (Jan. 9, 1981) -----	30, 206, 213, 228, 231	
57 IBLA 63 (Aug. 17, 1981) -----	201, 203, 210	
Shepardson, Edward C., 53 IBLA 79 (Mar. 2, 1981) -----	92, 162, 188, 195, 226, 230, 232, 250	
Sherman, Gertrude E. v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 25 (June 29, 1981), 88 I.D. 619 -----	34, 102, 105	
Sherman, Marvin (Mr. & Mrs.), Uniform Relocation Assistance Appeal of, 4 OHA 199 (Oct. 22, 1981) -----	253	
Shryock, Robert A. & Jas. O. Breene, Jr., 55 IBLA 74 (June 1, 1981) -----	173, 191, 204, 229	
Shultis, Louise P., 56 IBLA 163 (July 20, 1981) -----	79, 113	
Sierra Club, 53 IBLA 159 (Mar. 12, 1981) -----	89, 231, 254	
54 IBLA 31 (Apr. 6, 1981) -----	89, 254	
57 IBLA 288 (Aug. 31, 1981) -----	31, 229	
Sierra Club et al., 57 IBLA 79 (Aug. 21, 1981) -----	54, 158	
Sierra Club, Inc. & Southeast Alaska Conservation Council, Inc., 6 ANCAB 152 (Nov. 30, 1981), 88 I.D. 1027 -----	24	
Silbaugh, Jack & Lisa, William E. Dam, 60 IBLA 217 (Nov. 30, 1981) -----	86, 120	
Silica Sand Corp., 57 IBLA 76 (Aug. 21, 1981) -----	65, 124	
Silva, John, 59 IBLA 167 (Oct. 26, 1981) -----	74, 117, 153	
Singleton Contracting Corp., Appeal of, IBCA-1413-12-80 (Aug. 12, 1981), 88 I.D. 722 -----	43, 45, 46, 47, 50, 226	
Slowey, Lula Lorene McCracken, 58 IBLA 202 (Sept. 29, 1981) -----	2, 35, 98, 214, 217, 236	
Smalley, Roy B., et al., 59 IBLA 238 (Oct. 28, 1981) -----	86, 119, 125, 153	
Smart, Lee, 59 IBLA 235 (Oct. 28, 1981) -----	86, 153	
Smeaton, John T., et al., 59 IBLA 108 (Oct. 26, 1981) -----	85, 118, 144	
Smith, James W. (On Reconsidera- tion), 55 IBLA 390 (June 30, 1981) -----	88, 221, 222, 224, 261	
Smith, Jerry R., 58 IBLA 232 (Oct. 6, 1981) -----	168, 175, 193	
Smith, Sherman C., Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981) -----	15, 96, 131, 137, 139, 157, 258	
Smith, William J., Sr., et al.; U.S. v., 54 IBLA 12 (Apr. 6, 1981) -----	57, 60, 61, 130, 133, 232	
Smith, William R., 59 IBLA 252 (Oct. 29, 1981) -----	80, 114	
Sneed, Franklin D. (Mr. & Mrs.), Uniform Relocation Assistance Appeal of, 4 OHA 143 (Apr. 9, 1981) -----	253	
Soehner, Robert W., 56 IBLA 370 (Aug. 3, 1981) -----	70, 147	
Solis, Angeline LaBelle, Estate of, 8 IBIA 312 (May 29, 1981) -----	100, 103	
Southern California Edison Co., 55 IBLA 210 (June 18, 1981) -----	1, 87, 223, 224	
Southern Pacific Transportation Co., B. K. Herndon, 54 IBLA 174 (Apr. 21, 1981) -----	8, 106, 218	
Southern Union Co., 60 IBLA 181 (Nov. 25, 1981) -----	202, 205, 207, 211	
Southern Union Exploration Co., 54 IBLA 59 (Apr. 9, 1981) -----	186, 189	
Soyland, Johannes, 52 IBLA 233 (Feb. 3, 1981) -----	68, 112, 121	
Spear, Howell, 56 IBLA 151 (July 20, 1981) -----	2, 162, 187	
Spear, Irma, 52 IBLA 360 (Feb. 19, 1981) -----	109, 162, 164, 193	
Speckert, Armin; U.S. v., 55 IBLA 340 (June 26, 1981) -----	137, 232, 234	
St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981) -----	6, 68, 159, 218, 238	
Stahl, Kenneth D., Estate of, 56 IBLA 276 (July 28, 1981) -----	79, 113	
Standridge, Dorothy L., et al., 55 IBLA 131 (June 3, 1981) -----	2, 35, 97, 215, 217, 236	

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
Starks, John Walter, 55 IBLA 266 (June 25, 1981) -----59, 60, 170, 174	Stokes, Marvin Lee, 58 IBLA 199 (Sept. 29, 1981) -----3, 98
State of Alaska, 5 ANCAB 373 (July 28, 1981) -----22	Stoos, James M., 57 IBLA 394 (Sept. 10, 1981) -----94
6 ANCAB 230 (Dec. 15, 1981) -----23	Storper, Bernard S., 60 IBLA 67 (Nov. 19, 1981) -----60, 162, 178
6 ANCAB 233 (Dec. 15, 1981) -----23	Striegel, Edwin, Marie A. O'Brien, 60 IBLA 232 (Dec. 4, 1981) -----65, 76, 123, 153
6 ANCAB 236 (Dec. 15, 1981) -----23	Strong, Gary E., 57 IBLA 306 (Aug. 31, 1981) -----171, 261
6 ANCAB 239 (Dec. 15, 1981) -----23	Stuber, Allen, d.b.a. Stuber Construction Co., Appeal of, IBCA-1369-6-80 (Mar. 11, 1981) -----43, 44
6 ANCAB 256 (Dec. 21, 1981) -----23	Stuck, Marvin G., 60 IBLA 197 (Nov. 27, 1981) -----73, 81, 114, 151
6 ANCAB 259 (Dec. 21, 1981) -----23	Sullivan, James E., 54 IBLA 1 (Apr. 1, 1981) -----54, 189, 207
6 ANCAB 262 (Dec. 21, 1981) -----23	Sunder, Robert G. & Jeanne E. R., 52 IBLA 375 (Feb. 19, 1981) -----78, 146, 160, 219
54 IBLA 373 (May 19, 1981) -----225	Superior Oil Co., 57 IBLA 404 (Sept. 14, 1981) -----5, 31, 207, 227, 235
58 IBLA 118 (Sept. 24, 1981) -----31, 227, 230	Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981) -----1, 93, 99, 100, 106, 206, 215
61 IBLA 68 (Dec. 31, 1981) -----15, 257	S & W Contracting Co., Inc., Appeal of, IBCA-1307-10-79 (May 6, 1981), 88 I.D. 527 -----44
State of Alaska v. Juneau Area Acting Director, Bureau of Indian Affairs, & Arctic John Etalook, 9 IBIA 126 (Nov. 9, 1981), 88 I.D. 1020 -----99	Swanner, Claires Inez Wood, 58 IBLA 108 (Sept. 24, 1981) -----3, 98
State of Alaska, Dept. of Trans- portation & Public Facilities, 5 ANCAB 281 (May 1, 1981) -----24	Sykes, Jan Christian, 55 IBLA 23 (May 26, 1981) -----35, 97, 217, 236
5 ANCAB 284 (May 4, 1981) -----22, 24	Sypult, Cleatus, 53 IBLA 171 (Mar. 16, 1981) -----81, 115, 121, 146
5 ANCAB 307 (June 26, 1981)	Systems Technology Associates, Inc., Appeal of, IBCA-1108-4-76 (Feb. 19, 1981), 88 I.D. 293 -----47
88 I.D. 629 -----20, 26, 28, 225	IBCA-1108-4-76 (Apr. 30, 1981), 88 I.D. 521 -----230
6 ANCAB 143 (Oct. 30, 1981) -----23	Szczepanski, Jean, 60 IBLA 375 (Dec. 22, 1981) -----202, 206, 211
6 ANCAB 150 (Nov. 27, 1981) -----23	Szynkowski, Edward J., Jr., 53 IBLA 310 (Mar. 25, 1981) -----64, 81, 115, 146
State of Alaska (Leland R. Estabrook), 54 IBLA 346 (May 12, 1981) -----14, 17, 234	Taggart, Jesse M., et al.; U.S. v., 53 IBLA 353 (Mar. 30, 1981) -----11, 128, 130, 133, 136
Stauffer Chemical Co. of Wyoming, 54 IBLA 85 (Apr. 14, 1981) -----109, 237	Talbot, William E., et al., 52 IBLA 12 (Jan. 5, 1981) -----63, 77, 145, 260
Stephens, Lester & Betty, 58 IBLA 14 (Sept. 16, 1981) -----38, 39	
Steward, R. James; U.S. v., 54 IBLA 67 (Apr. 10, 1981) -----144, 155, 158	
Stewart, Alex, 55 IBLA 105 (June 1, 1981) -----79, 113, 148	
Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981) -----1, 13, 33, 173, 177, 220, 229	
Stewart, Nancy L., Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981) -----55, 56, 63, 167, 180, 192	
Stoddard, David J., 4 OHA 204 (Oct. 26, 1981) -----218	

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Taylor, Allen W., 56 IBLA 143 (July 20, 1981) -----	33, 174, 178	Thoroughfare Coal Co., 3 IBSMA 72 (Mar. 25, 1981), 88 I.D. 406 -----	241, 244
Teaford, Otis (Mrs.), 56 IBLA 367 (Aug. 3, 1981) -----	65, 142	Thorpe, Richard & Anne, 59 IBLA 176 (Oct. 26, 1981) -----	84, 118, 139, 157, 258
Tenneco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981) -----	198, 199, 212, 213, 214	Tibbals, James N. & Janet D., 58 IBLA 42 (Sept. 17, 1981) -----	6, 57, 70, 106, 147, 160, 219, 239
Tennessee Consolidated Coal Co., Inc., 3 IBSMA 145 (Apr. 30, 1981), 88 I.D. 508 -----	246, 248	Tipton, Hugh A., 55 IBLA 68 (June 1, 1981) -----	94, 95
Terwilliger, Jack, 56 IBLA 383 (Aug. 3, 1981) -----	72, 149	Titus, John T., 58 IBLA 207 (Sept. 29, 1981) -----	80, 114, 123
Tetlin Native Corp., 5 ANCAB 197 (Apr. 14, 1981), 88 I.D. 442 -----	20, 23, 26	Tomporowski, William H., 53 IBLA 21 (Feb. 26, 1981) -----	79, 146
5 ANCAB 212 (Apr. 15, 1981) -----	20, 23, 26	Tonne, Erwin, 57 IBLA 303 (Aug. 31, 1981) -----	80, 114
5 ANCAB 220 (Apr. 17, 1981) -----	23	Tony, Karen R., et al., 60 IBLA 167 (Nov. 24, 1981) -----	76, 81, 120
5 ANCAB 299 (May 13, 1981) -----	22	Toptiki Coal Corp. (On Recon- sideration), 3 IBSMA 40 (Mar. 16, 1981), 88 I.D. 367 -----	247, 248
Teton Energy Co., Inc., 61 IBLA 47 (Dec. 31, 1981) -----	207, 209	Trabal, Jose (Dr.), 60 IBLA 97 (Nov. 19, 1981) -----	160, 165, 170, 219, 239
Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981) -----	12, 31, 107, 215, 217, 240, 249, 251, 261	Trans-Texas Energy, Inc., 56 IBLA 211 (July 22, 1981) -----	192, 197
Texas Oil & Gas Corp., 58 IBLA 175 (Sept. 28, 1981), 88 I.D. 879 -----	10, 31, 187, 194, 201, 204, 210, 227	56 IBLA 295 (July 28, 1981) -----	186, 192, 198
Thermal Resources, Inc., 54 IBLA 329 (May 5, 1981) -----	93, 94	57 IBLA 32 (Aug. 6, 1981) -----	192, 197
Thom, Richard W., 58 IBLA 291 (Oct. 13, 1981) -----	74, 119, 160, 219, 239	Tri-County Cattlemen's Ass'n, Idaho Cattlemen's Ass'n, 60 IBLA 305 (Dec. 18, 1981) -----	67, 91, 256
Thomas, Betty J., 56 IBLA 323 (July 29, 1981) -----	168, 178	Truesdell, David, et al., 57 IBLA 60 (Aug. 17, 1981) -----	70, 80, 113, 147
Thomas, John C. & Martha W., d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981) ----	13, 40, 137, 138, 142, 156, 233, 236, 238, 258	Trujillo, Rosita, 60 IBLA 316 (Dec. 18, 1981) -----	169, 182, 193
(On Reconsideration), 59 IBLA 364 (Nov. 9, 1981) ---	139, 142, 157, 236, 238, 259, 261	Tugatuk, Anuska (On Reconsid- eration), 59 IBLA 345 (Nov. 5, 1981) -----	17
Thompson, Lyle I., 56 IBLA 155 (July 20, 1981) -----	79, 113, 122	Turley, C. F., Jr., 60 IBLA 237 (Dec. 4, 1981) -----	81, 120, 126
Thompson, Shirley & Duane R., 57 IBLA 154 (Aug. 25, 1981) -----	5, 40, 71, 80, 113, 149	Turner, Allen, 56 IBLA 280 (July 28, 1981) -----	82, 116, 123, 149, 160, 219, 238
Thorne, Rupert, 58 IBLA 319 (Oct. 16, 1981) -----	5, 14, 40, 65, 73, 81, 118, 123, 146, 234	Turner, William M., 54 IBLA 111 (Apr. 15, 1981) -----	164, 194, 197
Thornton, Shannon N., 56 IBLA 359 (Aug. 3, 1981) -----	80, 113	Turtle, Mark, Sr., Estate of, 8 IBIA 272 (Apr. 15, 1981) -----	101, 102, 105
		Underwood, Marjorie N., 58 IBLA 21 (Sept. 16, 1981) -----	32, 218

Table of Decisions Reported

Page(s)Page(s)U N I F O R M R E L O C A T I O NA S S I S T A N C E A P P E A L O F :

Uniform Relocation Assistance
Appeal of Allison, William B.
(Mr.), Executor of the Estate
of Amie B. Allison (Deceased),
4 OHA 117 (Feb. 13, 1981) -----251, 252

Uniform Relocation Assistance
Appeal of Angle, Jesse W.
(Mr. & Mrs.), 4 OHA 160
(Apr. 29, 1981) -----253

Uniform Relocation Assistance
Appeal of BJC/Knowles Architects
Associates, 4 OHA 189 (Aug. 6, 1981) -----252

Uniform Relocation Assistance
Appeal of Brois, John A.
(Mr. & Mrs.), 4 OHA 208
(Nov. 12, 1981) -----252

Uniform Relocation Assistance
Appeal of Cardillo, James
(Mr. & Mrs.), 4 OHA 177
(July 14, 1981) -----252

Uniform Relocation Assistance
Appeals of Chastain, Adron J.
(Mr. & Mrs.) et al., 4 OHA 166
(June 8, 1981) -----251

Uniform Relocation Assistance
Appeal of Daleske, Donald J.
(Mr.), 4 OHA 101 (Jan. 8, 1981) -----253

Uniform Relocation Assistance
Appeal of Erickson, Josephine
(Mrs.), 4 OHA 184 (July 30, 1981) -----252, 253

Uniform Relocation Assistance
Appeal of Evans, Duval
(Mr. & Mrs.), 4 OHA 107
(Jan. 23, 1981) -----251, 253

Uniform Relocation Assistance
Appeal of Holecek, Jean (Mrs.),
4 OHA 123 (Feb. 20, 1981) -----253

Uniform Relocation Assistance
Appeal of Johnson, George,
Jessie Johnson Picker,
Reinhold R. & Howard W.
Johnson, 4 OHA 153 (Apr. 13, 1981) -----252

Uniform Relocation Assistance
Appeal of Lang, Robert O. &
Joanne M., 4 OHA 131
(Mar. 12, 1981) -----253

Uniform Relocation Assistance
Appeal of Little, Lawson (Mr.),
4 OHA 156 (Apr. 17, 1981) -----252

Uniform Relocation Assistance
Appeal of Meeks, Richard M.
(Mr.), 4 OHA 173 (July 13, 1981) -----252
4 OHA 196 (Oct. 13, 1981) -----251

Uniform Relocation Assistance
Appeal of Safford Marine, Inc.,
4 OHA 211 (Nov. 24, 1981) -----252

Uniform Relocation Assistance
Appeal of Sherman, Marvin
(Mr. & Mrs.), 4 OHA 199
(Oct. 22, 1981) -----253

Uniform Relocation Assistance
Appeal of Sneed, Franklin D.
(Mr. & Mrs.), 4 OHA 143
(Apr. 9, 1981) -----253

Uniform Relocation Assistance
Appeal of Wilson, W. H.
(Mr. & Mrs.), 4 OHA 192
(Aug. 20, 1981) -----252

* * * * *

Union Oil Co., 56 IBLA 206
(July 22, 1981) -----9, 30, 67, 90, 255

(On Reconsideration),
58 IBLA 166 (Sept. 28, 1981) -----9, 10, 31, 67,
90, 255

United States Energy Corp.
et al., 58 IBLA 159
(Sept. 28, 1981) -----5, 40, 73, 81, 118, 146

United States Steel Corp.,
52 IBLA 319 (Feb. 19, 1981) -----127, 143

U.S. Fish & Wildlife Service,
6 AN CAB 37 (Aug. 21, 1981), 88 I.D. 757 -----23

U N I T E D S T A T E S V E R S U S :

U.S. v. Anderson, C. J. &
C. Joseph, 57 IBLA 256
(Aug. 28, 1981) -----12, 129, 132, 135,
136, 227

U.S. v. Bowen, Aimee Marion
(Edenshaw) & Phyllis Josephine
Kimball, 8 IBIA 218 (Feb. 12,
1981), 88 I.D. 261 -----6, 19, 28,
104, 239

U.S. v. Braniff, Gerald H.,
59 IBLA 337 (Nov. 5, 1981) -----16, 59, 61

U.S. v. Burt, John, et al.,
59 IBLA 326 (Nov. 5, 1981) -----31, 34, 41,
129, 138, 232,
233, 235

U.S. v. Campbell, Lyle E. &
Diane, 59 IBLA 261
(Oct. 29, 1981) -----107, 142

U.S. v. Corns, Graham R.,
53 IBLA 5 (Feb. 26, 1981) -----8, 9, 11, 12,
30, 41, 127, 130,
132, 142, 232

U.S. v. Day, Blanch P.,
Wilma Jean Kendall, 56 IBLA
300 (July 29, 1981) -----11, 127, 134, 137

Table of Decisions Reported

	Page(s)		Page(s)
U.S. v. Dredge Corp. (The), 54 IBLA 281 (Apr. 28, 1981)	-----11, 128, 134, 136, 227	U.S. v. Lewis, Malin W., 58 IBLA 282 (Oct. 8, 1981)	-----15, 129, 132, 138, 232
U.S. v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)	-----9, 15, 30, 58, 127, 128, 131, 139, 157, 226, 258	U.S. v. McDowell, John, 53 IBLA 270 (Mar. 24, 1981)	-----11, 133, 136
U.S. v. Duval, Maurice, et al., 53 IBLA 341 (Mar. 26, 1981)	-----11, 128, 136	U.S. v. McDowell, John & Miguel Nunez, 56 IBLA 100 (July 15, 1981)	-----12, 58, 61, 134
U.S. v. Flynn, Donald E. & Heirs of Henry Oroock (Deceased), 53 IBLA 208 (Mar. 18, 1981), 88 I.D. 373	-----16, 19, 232	U.S. v. Noss, J. L. & Mary F., 54 IBLA 355 (May 12, 1981)	-----11, 57, 96, 128, 133, 137
U.S. v. Fox, Earl F., 53 IBLA 333 (Mar. 26, 1981)	-----11, 127, 133	U.S. v. Noyce, Leon & Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)	-----41, 58, 111, 129, 132, 135, 138, 141, 157
U.S. v. Frogley, Ralph F., Melvin S. Eilers, 54 IBLA 321 (Apr. 30, 1981)	-----130, 134, 143	U.S. v. Nunez, Miguel, 59 IBLA 134 (Oct. 26, 1981)	-----129, 135
U.S. v. Haskins, Richard P., 59 IBLA 1 (Oct. 21, 1981), 88 I.D. 925	-----3, 6, 7, 85, 119, 125, 137, 141, 142, 143, 144, 157, 226	U.S. v. Oneida Perlite Corp., 57 IBLA 167 (Aug. 27, 1981), 88 I.D. 772	-----7, 10, 30, 128, 137, 226
U.S. v. Hawes, Alfred N., et al., Estate of, 52 IBLA 164 (Jan. 21, 1981)	-----132	U.S. v. Orme, Claude T. & Sarah E., 57 IBLA 373 (Sept. 8, 1981)	-----14, 96, 129, 132, 135, 232, 234
U.S. v. Higbee, Ernest, et al., 52 IBLA 83 (Jan. 9, 1981)	-----5, 107, 108, 110, 129, 143, 158, 161, 214, 235	U.S. v. Pettigrew, Robert A., 54 IBLA 149 (Apr. 17, 1981), 88 I.D. 453	-----144, 155, 158
U.S.; Howell, Corinne Mae & Her Minor Children, Gary Arnold, Richard Dewayne, & Darcy Lynn Howell v., 9 IBIA 3 (June 11, 1981), 88 I.D. 575	-----27, 105	U.S. v. Polashek, D. J., 57 IBLA 104 (Aug. 25, 1981)	-----12, 128, 131, 135, 157
9 IBIA 70 (Sept. 9, 1981), 88 I.D. 822	-----6, 27, 105	U.S. v. Prowell, Virgil & Melinda, 52 IBLA 256 (Feb. 6, 1981)	-----7, 127, 132, 136, 137, 226, 232, 233
U.S. v. Jackson, Leo D., et al., 53 IBLA 289 (Mar. 24, 1981)	-----6, 11, 13, 55, 56, 62, 110, 127, 130, 133, 136, 140, 156, 257, 258	U.S. v. Reavely, William A., et al., 53 IBLA 320 (Mar. 25, 1981)	-----30, 228, 230
U.S. v. Johnson, Scott, 59 IBLA 207 (Oct. 27, 1981)	-----10, 129, 132, 135	U.S. v. Rouse, Alice W., et al., 56 IBLA 36 (July 8, 1981)	-----11, 58, 96, 128, 131, 134, 136, 137, 141, 227
U.S. v. Journigan, Russell & Lena, 59 IBLA 393 (Nov. 10, 1981)	-----10, 129	U.S. v. Smith, William J., Sr., et al., 54 IBLA 12 (Apr. 6, 1981)	-----57, 60, 61, 130, 133, 232
U.S. v. Kincanon, Estella M., et al., 54 IBLA 95 (Apr. 15, 1981)	-----126, 130, 136, 249	U.S. v. Speckert, Armin, 55 IBLA 340 (June 26, 1981)	-----137, 232, 234
U.S. v. Koenigsmark, Paul M., et al., 53 IBLA 377 (Mar. 31, 1981)	-----79, 112, 121, 147	U.S. v. Steward, R. James, 54 IBLA 67 (Apr. 10, 1981)	-----144, 155, 158
U.S. v. Kurelich, Michael, et al., 54 IBLA 124 (Apr. 17, 1981)	-----13, 106, 110, 128, 130, 134, 141, 142, 229	U.S. v. Taggart, Jesse M., et al., 53 IBLA 353 (Mar. 30, 1981)	-----11, 128, 130, 133, 136
		U.S. v. Vaughn, Mamie, et al., 56 IBLA 247 (July 24, 1981)	-----126, 127, 131, 136

Table of Decisions Reported

<u>Page(s)</u>	<u>Page(s)</u>
U.S. v. Verde Mining Co., Inc., <u>et al.</u> , 57 IBLA 225 (Aug. 27, 1981) -----11, 128, 131, 135, 141, 142	Warren, Dell, 54 IBLA 159 (Apr. 21, 1981) -----79, 113, 159, 218, 238
U.S. v. Zwang, Elodymae & Darrell, 55 IBLA 83 (June 1, 1981) -----53	Washington Chromium Co., 60 IBLA 378 (Dec. 23, 1981) -----7, 76, 154
* * * * *	Washington State University, Appeal of, IBCA-1467-6-81 & IBCA-1469-6-81 (Nov. 9, 1981), 88 I.D. 1016 -----42
Universal Coal Co., 3 IBSMA 200 (July 16, 1981), 88 I.D. 657 -----241, 244, 246	Wassillie, Elia (On Reconsidera- tion), 59 IBLA 361 (Nov. 9, 1981) -----17
3 IBSMA 218 (July 28, 1981), 88 I.D. 672 -----245, 247	Watkins Hutcheson Building Co., Inc., 54 IBLA 137 (Apr. 17, 1981) -----32, 89
Uranus, Inc., 58 IBLA 139 (Sept. 25, 1981) -----73, 119, 159	Watkins, James, 54 IBLA 54 (Apr. 9, 1981) -----79, 112
Urban, John E., 56 IBLA 343 (July 30, 1981) -----80, 113	Watts, Joe L., 59 IBLA 127 (Oct. 26, 1981) -----57, 63, 80, 114, 125
Utah Power & Light Co., 52 IBLA 105 (Jan. 12, 1981) -----1, 87, 223, 224	Webb, James E., 60 IBLA 323 (Dec. 18, 1981) -----171, 176, 182
Valiant Resources, Inc., 56 IBLA 278 (July 28, 1981) -----71, 149	Webster, Lloyd P., 58 IBLA 363 (Oct. 20, 1981) -----80, 114, 123, 160, 219, 239
Valley Steel Builders, Inc., Appeal of, IBCA-1275-6-79 (Apr. 29, 1981), 88 I.D. 518 -----42	Weiser, Yvonne, <u>et al.</u> v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 76 (Sept. 29, 1981) -----34, 102, 105
Vaughn, Mamie, <u>et al.</u> ; U.S. v., 56 IBLA 247 (July 24, 1981) -----126, 127, 131, 136	Weiss, Marilyn K., 54 IBLA 324 (Apr. 30, 1981) -----165, 173
Verde Mining Co., Inc., <u>et al.</u> ; U.S. v., 57 IBLA 225 (Aug. 27, 1981) -----11, 128, 131, 135, 141, 142	Welch, William C., 60 IBLA 248 (Dec. 4, 1981) -----162, 187, 190
Vikarcik, John J., George W. Vrable, 58 IBLA 377 (Oct. 21, 1981) -----152, 260	West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981) -----56, 62, 65, 69, 112, 126, 154
Vogel, Eugene V., 52 IBLA 280 (Feb. 9, 1981), 88 I.D. 258 -----64, 87	West Virginia Energy, Inc., 3 IBSMA 301 (Sept. 17, 1981), 88 I.D. 831 -----240, 241, 243
Vrable, George W., 57 IBLA 330 (Sept. 1, 1981) -----80, 114, 124	West Virginia Highlands Conser- vancy (The), 3 IBSMA 154 (May 28, 1981), 88 I.D. 570 -----241
Wadsworth, L. Grace, 57 IBLA 242 (Aug. 27, 1981) -----80, 113, 160, 219, 238	Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981) -----4, 139, 156, 257, 258
Waldenberg, Samuel, 59 IBLA 390 (Nov. 10, 1981) -----65, 75, 125	Western Slope Gas Co., 61 IBLA 57 (Dec. 31, 1981) -----33, 222, 223
Waliszek, Stan F., 52 IBLA 101 (Jan. 12, 1981) -----199	Wheatley, Jack H., 55 IBLA 145 (June 8, 1981) -----65, 116, 122
Walker, Kenneth G., 52 IBLA 214 (Jan. 30, 1981) -----78, 16C, 219	Wheeler, Curtis, 54 IBLA 227 (Apr. 27, 1981) -----177, 195
Walker, Richard P., 54 IBLA 4 (Apr. 1, 1981) -----182	55 IBLA 65 (May 29, 1981) -----165, 177, 191
Warren, A. Helene, Appeal of, IBCA-1422-1-81 (Sept. 29, 1981) -----52	55 IBLA 278 (June 25, 1981) -----166, 196
IBCA-1422-1-81 (Nov. 9, 1981) -----230	56 IBLA 58 (July 10, 1981) -----167, 192, 196

Table of Decisions Reported

	<u>Page(s)</u>		<u>Page(s)</u>
Wheeler, Ray & Illa Gene, 55 IBLA 370 (June 26, 1981) -----	38, 39	Wilson, W. H. (Mr. & Mrs.), Uniform Relocation Assistance Appeal of, 4 OHA 192 (Aug. 20, 1981) -----	252
Wheeler, Warren, 56 IBLA 350 (Aug. 3, 1981) -----	83, 117	Wiscombe, Leland W., Dudley L. Davis, 57 IBLA 161 (Aug. 25, 1981) -----	83, 117
Whelan's Mining & Exploration, Inc., 58 IBLA 127 (Sept. 24, 1981) -----	60, 85, 118, 151	Womack, J. G., 58 IBLA 85 (Sept. 22, 1981) -----	84, 118, 129
White, Jack (Mr. & Mrs.), 53 IBLA 267 (Mar. 23, 1981) -----	79, 115, 121	Wood, Bryner, 52 IBLA 156 (Jan. 21, 1981), 88 I.D. 232 -----	66, 237
Whitewater Expeditions & Tours, 52 IBLA 80 (Jan. 9, 1981) -----	217, 237	Woods Petroleum Corp., et al., 55 IBLA 348 (June 26, 1981) -----	55, 56, 62, 164, 174, 180, 183, 184, 186, 191, 198
Whitlock, Charles H., 57 IBLA 252 (Aug. 28, 1981) -----	61, 107, 168, 196	Worthington, Joseph E., 54 IBLA 162 (Apr. 21, 1981) -----	108
Whitson, Reg, 55 IBLA 5 (May 26, 1981) -----	30, 79, 113, 230, 231	Wright, Robert L., Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981) -----	32, 161, 195, 205, 211, 229, 231
Wiley, Ken, 54 IBLA 367 (May 18, 1981) -----	58, 165	Wyoming Fuel Co., 52 IBLA 302 (Feb. 10, 1981) -----	2, 108, 110
Wilkinson, Robert F., 53 IBLA 106 (Mar. 4, 1981) -----	69, 81	Wyoming Water, Inc., 56 IBLA 139 (July 20, 1981) -----	223, 224
Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981) -----	95, 160, 208, 212, 233	Yak-Tat Kwaan, Inc., 5 ANCAB 172 (Feb. 27, 1981) -----	19, 22
Willden, Ronald, 60 IBLA 173 (Nov. 24, 1981) -----	71, 117	Yarnell, Wayne, 3 IBSMA 188 (July 15, 1981), 88 I.D. 652 -----	242, 243, 244, 245, 247, 248
Willessi, Joseph, Estate of, 8 IBIA 295 (May 28, 1981), 88 I.D. 561 -----	101, 103	Yonkee, William Adolph, et al., 54 IBLA 232 (Apr. 27, 1981) -----	5, 40, 62, 79, 113, 159, 218, 239
Williams, Ben R., 57 IBLA 8 (Aug. 5, 1981) -----	52, 66, 214	York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981) -----	168, 185, 186, 193, 198
Williams, Edna L., 59 IBLA 196 (Oct. 27, 1981) -----	178, 197	Young, Max W., 60 IBLA 224 (Nov. 30, 1981) -----	58, 202, 205, 211
Williams, Thomas, 56 IBLA 55 (July 10, 1981) -----	65, 69, 112, 121, 160, 219, 238	Young Bear, Victor, Estate of (Supp.), 8 IBIA 254 (Mar. 26, 1981), 88 I.D. 410 -----	101
Williamson, Lee B., 54 IBLA 326 (Apr. 30, 1981) -----	189, 195, 256	Zappia Exploration Group, 60 IBLA 336 (Dec. 22, 1981) -----	176, 178
Willis, Gary, 56 IBLA 217 (July 22, 1981) -----	5, 14, 41, 57, 96, 110, 131, 139, 141, 155, 157, 217, 229, 234	Zoch, F. Peter, 60 IBLA 150 (Nov. 24, 1981) -----	35, 193, 226
Willis, George H., et al., 54 IBLA 239 (Apr. 27, 1981) -----	79, 113	Zuckerman, Jack, et al., 56 IBLA 193 (July 22, 1981) -----	55, 56, 63, 167, 174, 180, 183, 185, 186, 192, 198
Willson, Douglas H., et al., 52 IBLA 246 (Feb. 6, 1981) -----	179	Zundel, Dwight L., 55 IBLA 218 (June 18, 1981) -----	33, 39
52 IBLA 390 (Feb. 24, 1981) -----	107, 195	Zwang, Elodymae & Darrell; U.S. v., 55 IBLA 83 (June 1, 1981) -----	53
58 IBLA 115 (Sept. 24, 1981) -----	196, 198		
Wilson, Robert P., 57 IBLA 40 (Aug. 10, 1981) -----	65, 80, 113, 123, 155, 160, 219, 238		
Wilson, Walter R., Jr., 55 IBLA 96 (June 1, 1981) -----	163, 188, 220, 221		

TABLE OF OPINIONS REPORTED

<u>Page(s)</u>	<u>Page(s)</u>
Annual Review, Revision & Reapproval of 5-year OCS Oil & Gas Leasing Programs, M-36932 (Jan. 5, 1981), 88 I.D. 20 -----212	Nonreserved Water Rights - United States Compliance With State Law, M-36914 (Supp. I) (Sept. 11, 1981), 88 I.D. 1055 -----254
Application of Eagle Protection & Migratory Bird Treaty Acts to Reserved Indian Hunting Rights, M-36936 (June 15, 1981), 88 I.D. 586 -----105	Ownership of & Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981), 88 I.D. 538 -----3, 4, 36, 109, 161, 215
Bureau of Land Management Wilderness Review & Valid Existing Rights (The), M-36910 (Supp.) (Oct. 5, 1981), 88 I.D. 909 -----90	Refunds and Credits Under the Outer Continental Shelf Lands Act, M-36942 (Dec. 15, 1981), 88 I.D. 1090 -----2, 214
Cumulative Impacts under Sec. 7 of the Endangered Species Act, M-36905 (Supp.) (Aug. 26, 1981), 88 I.D. 903 -----53	Selection of the Proper Legal Instrument (Contract, Grant or Cooperative Agree- ment) under Federal Grant & Cooperative Agreement Act of 1977 (P.L. 95-224) to be used in Funding Construction of Recreation Facilities Authorized under the Federal Water Project Recreation Act of 1965 (P.L. 89-72), M-36931 (Jan. 19, 1981), 88 I.D. 228 -----63
M-36938 (Aug. 27, 1981), 88 I.D. 903 -----54	Supplement to Solicitor Opinion No. M-36914, on Federal Water Rights of the National Park Service, Fish & Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (Supp.) (Jan. 16, 1981), 88 I.D. 253 -----63, 250, 254
Effect of Mining Claims on Secre- tarial Authority to Issue Pros- pecting Permits & Preference Right Leases for Coal & Phosphate (Modifying Solicitor's Opinion M-36893 of Aug. 2, 1977, & its Supplement of Nov. 19, 1979, upon the same subject); The "Unclaimed, Undeveloped" Issue, M-36893 (Supp. II) (Jan. 8, 1981), 88 I.D. 247 -----36, 158, 215	Whether Leases Issued Prior to Aug. 4, 1976, Subject to Read- justment after that Date must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, M-36939 (Sept. 17, 1981), 88 I.D. 1003 -----36, 37, 108, 239
Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981), 88 I.D. 813 -----4, 93, 94, 261	Whether the U.S. Geological Survey May Make Public Certain Informa- tion About Offshore Oil & Gas Wells, M-36925 (Nov. 24, 1980), 88 I.D. 699 -----92, 213
Indian Country Status of Mississippi Choctaw School Lands, M-36933 (Jan. 19, 1981), 88 I.D. 333 -----105	
Indian Tribal Status under the Bald Eagle Protection Act, M-36934 (Feb. 26, 1981), 88 I.D. 338 -----34, 105	

* * * * *

TABLE OF OVERRULED AND MODIFIED CASES FOR
THE DEPARTMENT OF THE INTERIOR

For judicial modification and reversals see
Table of Suits for Judicial Review.

Ahvakana, Lucy S., 3 IBLA 341 (1971); overruled to extent inconsistent, U.S. v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981).

Alabama By-Products Corp., 6 IBMA 168, 1975-1976 OSHD par. 20,756 (1976); set aside, 7 IBMA 85, 83 I.D. 574 (1976).

Alaska Railroad, Appeal of, 3 ANCAB 273, 86 I.D. 397 (1979); affirmed in part, vacated in part, 3 ANCAB 351, 86 I.D. 452 (1979).

Alaska Railroad, Appeal of, 3 ANCAB 280 (1979); affirmed in part, modified in part; 3 ANCAB 377 (1979).

Alaska, State of and Seldovia Native Ass'n, Inc., Appeals of, 2 ANCAB 1, 84 I.D. 349 (1977); modified, Solicitor's Opinion -- Valid Existing Rights Under the Alaska Native Claims Settlement Act, Secretarial Order No. 3016 (Dec. 14, 1977), 85 I.D. 1 (1978).

Alexander, William T., 21 IBLA 56 (1975); reaffirmed as modified, U.S. v. Alexander, 41 IBLA 1 (1979).

Amanda Mining & Manufacturing Ass'n, 42 IBLA 144 (1979); overruled to extent inconsistent, Harvey A. Clifton et al., 60 IBLA 29 (1981).

American Telephone & Telegraph Co., 57 IBLA 215 (1981); modified in part (On Recon.), 59 IBLA 343 (1981).

Amoco Production Co., 24 IBLA 227 (1976); vacated (On Recon.), 35 IBLA 43 (May 9, 1978).

Anelon, Gregory, Sr., 21 IBLA 230 (1975); vacated (On Recon.), 60 IBLA 101 (1981).

Applicability of Montana Tax to Oil and Gas Leases of Ft. Peck Lands -- Opinion of Assistant Secretary (Oct. 27, 1966); superseded to the extent that it is inconsistent, Solicitor's Opinion -- Tax Status of the Production of Oil and Gas from Leases of the Fort Peck Tribal Lands Under the 1938 Mineral Leasing Act, M-36896, 84 I.D. 905 (1977).

Archer, J. D., A-30750 (May 31, 1967); overruled, 79 I.D. 416 (1972).

Ayouiak, Mary, 22 IBLA 384 (1975); vacated (On Recon.), 59 IBLA 384 (1981).

Barash, Max, 63 I.D. 51 (1956); overruled in part, Solicitor's Opinion -- Issuance of Noncompetitive Oil and Gas Leases on Lands Within the Geologic Structures of Producing Oil or Gas Fields, M-36686, 74 I.D. 285 (1967); Permian Mud Service, Inc., 31 IBLA 150, 84 I.D. 342 (1977).

Bartel, John A., A-29664 (Oct. 11, 1962); distinguished, A-30129 (Nov. 9, 1964).

Bergman, Warner, 21 IBLA 173 (1975), 31 IBLA 21 (1977); vacated (On Recon.), 60 IBLA 214 (1981).

Breene, James O., Jr., 38 IBLA 281 (1978); vacated (On Recon.), 42 IBLA 395 (1979).

Brick, Irving B., 36 IBLA 235 (1978), overruled, Robert R. Furman, 49 IBLA 64 (1980).

Caldwell, Clair R., 42 IBLA 139 (1979); overruled to extent inconsistent, Harvey A. Clifton et al., 60 IBLA 29 (1981).

Caress, Charles, 41 IBLA 302 (1979); overruled to extent inconsistent, Harvey A. Clifton et al., 60 IBLA 29 (1981).

Chiskok, Evan, et al., 22 IBLA 153 (1975); vacated (On Recon.), 61 IBLA 1 (1981).

Clipper Mining Co., 22 L.D. 527 (1896); no longer followed in part, 67 I.D. 417 (1960).

Clipper Mining Co., The v. The Eli Mining and Land Co. et al., 33 L.D. 660 (1905); no longer followed in part, 67 I.D. 417 (1960).

Computation of Royalty under Sec. 15, 51 L.D. 283 (1925); overruled, Solicitor's Opinion -- Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888, 84 I.D. 54 (1977).

Continental Oil Co., 68 I.D. 186 (1961); overruled in pertinent part, Solicitor's Opinion, M-36921, 87 I.D. 291 (1980).

Continental Oil Co., 74 I.D. 229 (1967); distinguished, Solicitor's Opinion, M-36927, 87 I.D. 616 (1980).

Cupper, Jerry, 45 IBLA 215 (1980); overruled to extent inconsistent, Harvey A. Clifton et al., 60 IBLA 29 (1981).

Davidson, Robert A., 13 IBLA 368 (1973); overruled to extent inconsistent, J. Burton Tuttle, 49 IBLA 278, 87 I.D. 350 (1980).

Debord, Wayne E., 50 IBLA 216, 87 I.D. 465 (1980); modified, 54 IBLA 61 (1981).

Eastern Associated Coal Corp., 3 IBMA 331, 81 I.D. 567, 1974-1975 OSHD par. 18,706 (1974); overruled in part, Alabama By-Products Corp. (On Recon.), 7 IBMA 85, 83 I.D. 574 (1976); overruled in part, Zeigler Coal Co., 7 IBMA 280, 84 I.D. 127 (1977).

Eastern Associated Coal Corp., 5 IBMA 185, 82 I.D. 506, 1975-1976 OSHD par. 20,041 (1975); set aside in part (On Recon.), 7 IBMA 14, 83 I.D. 425 (1976).

Eklutna, Appeal of, 1 ANCAB 190, 83 I.D. 619 (1976); modified, Solicitor's Opinion -- Valid Existing Rights Under the Alaska Native Claims Settlement Act, Secretarial Order No. 3016 (Dec. 14, 1977), 85 I.D. 1 (1978).

Table of Overruled and Modified Cases

- Energy Partners, 21 IBLA 352 (1975); distinguished, Chevron Oil Co., 32 IBLA 275 (1977).
- Esplin, Lee J., 56 I.D. 325 (1938); overruled to extent it applies to 1926 Executive Order to artificially developed water sources on the public lands, Solicitor's Opinion, M-36914, 86 I.D. 553 (1979) -- Federal Water Rights of the National Park Service, Fish & Wildlife Service, Bureau of Reclamation and the Bureau of Land Management.
- Freeman v. Summers, 52 L.D. 201 (1927); overruled, U.S. v. Winegar, 16 IBLA 112, 81 I.D. 370 (1974); reinstated, U.S. v. Bohme, 51 IBLA 97, 87 I.D. 535 (1980).
- Freeman Coal Mining Co., 3 IBMA 434, 81 I.D. 723, 1974-1975 OSHD par. 19,177 (1974); overruled in part, Zeigler Coal Co., 7 IBMA 280, 84 I.D. 127 (1977).
- Fults, Bill, 61 I.D. 437 (1905); overruled, 69 I.D. 181 (1962).
- General Electric Co., 55 IBLA 185 (1981); overruled to extent inconsistent, 56 IBLA 327 (1981).
- Gifford, Samuel Lee, 53 IBLA 23 (1981); modified insofar as it set aside & remanded in part an Indian allotment application (On Recon.), 55 IBLA 1 (1981).
- Glassford, A. W., et al., 56 I.D. 88 (1937); overruled to extent inconsistent, Emily K. Connell, A-29176, 70 I.D. 159 (1963).
- Gosuk, Jack, 22 IBLA 392 (1975); vacated (On Recon.), 54 IBLA 306 (1981).
- Gray, Eleanor A., et al., A-28710 (May 18, 1962); vacated as to Claim No. 4, A-28710 (Supp.) (May 7, 1964).
- Hagood, L. N., et al., 65 I.D. 405 (1958); overruled, Beard Oil Co., 77 I.D. 166 (1970).
- Holbeck, Halvor F., A-30376 (Dec. 2, 1965); overruled, 79 I.D. 416 (1972).
- Idaho Dept. of Water Resources, 32 IBLA 89 (1977); vacated (On Recon.), 49 IBLA 221 (1980).
- Johansen, Daniel, 23 IBLA 292 (1976); vacated (On Recon.), 54 IBLA 295 (1981).
- Keating Gold Mining Co., Montana Power Co., Transferee, 52 L.D. 671 (1929); overruled in part, Arizona Public Service Co., 5 IBLA 137, 79 I.D. 67 (1972).
- Keller, Herman A., 14 IBLA 188, 81 I.D. 26 (1974); distinguished, Robert E. Belknap, 55 IBLA 200 (1981).
- Kern County Land Co. (On Recon.), IA-0168748, IA-0170927, and IA-0170928; approved by Under Secretary Carver, Oct. 25, 1965; will not be followed to the extent that it is inconsistent with this opinion.
- Kerr-McGee Nuclear Corp. et al., 41 IBLA 197 (1979); reversed (On Recon.), 43 IBLA 348 (1979).
- Konukpeak, Nora E., 23 IBLA 86 (1975); vacated (On Recon.), 60 IBLA 394 (1981).
- Land Classification State of California, A-31022 (Aug. 14, 1968 and Jan. 23, 1969); overruled to extent inconsistent, A-31022 (Oct. 14, 1969), as amended (Oct. 27, 1969).
- Layne and Bowler Export Corp., IBCA-245, 68 I.D. 33 (1961); overruled insofar as it conflicts, Schweigert, Inc. v. U.S., Ct. Cl. No. 26-66 (Dec. 15, 1967), and Galland-Henning Manufacturing Co., IBCA-534-12-65 (Mar. 29, 1968).
- Liability of Indian Tribes for State Taxes Imposed on Royalty Received from Oil and Gas Leases, 58 I.D. 535 (1943); superseded to extent it is inconsistent, Solicitor's Opinion -- Tax Status of the Production of Oil and Gas from Leases of the Ft. Peck Tribal Lands Under the 1938 Mineral Leasing Act, M-36896, 84 I.D. 905 (1977).
- Lindgren, Sarah F., 23 IBLA 174 (1975); vacated (On Recon.), 54 IBLA 181 (1981).
- Liss, Merwin E., 67 I.D. 385 (1960); overruled, Arthur E. Meinhardt, 11 IBLA 139, 80 I.D. 395 (1973).
- Luke, Louise, 22 IBLA 388 (1975); vacated (On Recon.), 60 IBLA 399 (1981).
- Luse, Jeanette L., et al., 61 I.D. 103 (1953); distinguished, Richfield Oil Corp., 71 I.D. 243 (1964).
- Manzonie, John and Adellie, I.G.D. 615; distinguished, A-29334 (July 26, 1963).
- Martin, Wilbur, Sr., A-25862 (May 31, 1950); overruled to extent inconsistent, U.S. v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981).
- Mead, Robert E., 61 I.D. 111 (1955); overruled, Jones-O'Brien, Inc., 85 I.D. 89 (1978).
- Merritt-Chapman & Scott Corp., IBCA-257 (June 22, 1961); distinguished, IBCA-274 (Sept. 15, 1961).
- Mertz, Dennis J., 43 IBLA 302 (1979); overruled to extent inconsistent, Harvey A. Clifton et al., 60 IBLA 29 (1981).
- Mikesell, Henry D., A-24112 (Mar. 11, 1946); rehearing denied (June 20, 1946); overruled to extent inconsistent, 70 I.D. 149 (1963).
- Miller, Duncan, A-29760 (Sept. 18, 1963); overruled, 6 IBLA 216, 79 I.D. 416 (1972).
- Miller, Duncan, A-30742 (Dec. 2, 1966); overruled, 6 IBLA 216, 79 I.D. 416 (1972).
- Miller, Duncan, A-30722 (Apr. 14, 1967); overruled, 6 IBLA 216, 79 I.D. 416 (1972).
- Miller, Duncan, 6 IBLA 283 (1972); overruled to the extent inconsistent, Jones-O'Brien, Inc., 85 I.D. 89 (1978).
- Minnier, Willene, 45 IBLA 1 (1980); overruled to extent inconsistent, Harvey A. Clifton et al., 60 IBLA 29 (1981).
- Morgan, Henry S., et al., 65 I.D. 369 (1958); overruled to extent inconsistent, 71 I.D. 22 (1964).
- Moses, Beulah, 21 IBLA 157 (1975); vacated (On Recon.), 60 IBLA 252 (1981).

Mountain Fuel Supply Co., A-31053 (Dec. 19, 1969); overruled, 6 IBLA 216, 79 I.D. 416 (1972).

Munsey, Glen, et al., v., Smitty Baker Coal Co., Inc., 1 IBMA 144, 162; 79 I.D. 501, 509 (1972); distinguished, Sewell Coal Co., 2 IBMA 80, 80 I.D. 251 (1973).

Myll, Clifton O., 71 I.D. 458 (1964); supplemented, 71 I.D. 486 (1964); vacated, 72 I.D. 536 (1965).

National Livestock Co. et al., I.G.D. 55 (1938); overruled, U.S. v. Charles Maher et al., 5 IBLA 209, 79 I.D. 109 (1972).

Naughton, Harold J., 3 IBLA 237, 78 I.D. 300 (1971); distinguished, Kristeen J. Burke et al., 20 IBLA 162 (May 5, 1975).

New Mexico, State of, 24 IBLA 135 (1976); vacated (On Recon.), 50 IBLA 367 (1980).

Oil and Gas Privilege and License Tax, Fort Peck Reservation, Under Laws of Montana, M-36318 (Oct. 13, 1955); superseded to the extent it is inconsistent, Solicitor's Opinion -- Tax Status of the Production of Oil and Gas from Leases of the Ft. Peck Tribal Lands Under the 1938 Mineral Leasing Act, M-36896, 84 I.D. 905 (1977).

Opinion of Associate Solicitor (Lands), M-34999 (Oct. 22, 1947); distinguished, Lands Eligible to be Placed Under Recordable Contracts, M-36613, 68 I.D. 433 (1961).

Opinion of Associate Solicitor for Indian Affairs, M-36756 (Oct. 8, 1968) -- Jurisdiction of Lands Withdrawn for the Benefit of Certain Groups of Mission Indians, Calif. -- Patent of Land Under the Act of Mar. 1, 1907; vacated as to those parts in conflict with the decision of the Asst. Secretary of the Interior dated Nov. 4, 1971. -- Authority to Issue Trust Patents for the Benefit of Certain Groups of Mission Indians of Calif., Pursuant to the Act of Mar. 1, 1907, for Parcels of Land Within the "Mission Reserve," M-36756 (Supp.) (Nov. 18, 1971).

Opinion of Chief Counsel, 43 L.D. 339 (1914) -- Reclamation -- Water Right -- Proviso to Sec. 3, Act of Aug. 9, 1912; explained, Proposed Repayment Contracts -- Kings and Kern River Projects, M-36634, 68 I.D. 372 (1961).

Opinion of Deputy Assistant Secretary (Dec. 2, 1966), affirming Oct. 27, 1966; superseded to the extent that it is inconsistent, Solicitor's Opinion -- Tax Status of the Production of Oil and Gas from Leases of the Ft. Peck Tribal Lands Under the 1938 Mineral Leasing Act, M-36896, 84 I.D. 905 (1977).

Opinion of Secretary, M-36733, 75 I.D. 147 (1968) -- Union Oil Co. Bid on Tract No. 228, Brazos Area, Texas Offshore Sale; vacated, M-36733 (Supp.), 76 I.D. 69 (1969).

Opinion of Solicitor, 55 I.D. 14 (1934) -- Powers of Indian Tribes; overruled so far as inconsistent, Authority of the Bureau of Indian Affairs to Transfer to an Indian Tribe the Direction of Federal Employees Pursuant to the Provisions of R.S. § 2072, 25 U.S.C. § 48, M-36803, 77 I.D. 49 (1970).

Opinion of Solicitor, M-27690 (June 15, 1934) -- Migratory Bird Treaty Act; overruled to extent of conflict, M-36936, 88 I.D. 586 (1981).

Opinion of Solicitor, M-28198 (Jan. 8, 1936) -- finding, inter alia, that Indian title to certain lands within the Fort Yuma Reservation has been extinguished, is well founded and is affirmed, Solicitor's Opinion, M-36886, 84 I.D. (1977) -- Title to Certain Lands Within the Boundaries of the Ft. Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1885; overruled, Solicitor's Opinion, M-36908 86 I.D. 3 (1979) -- Title to Certain Lands Within the Boundaries of the Fort Yuma (Now Called Quechan) Indian Reservation.

Opinion of Solicitor, 55 I.D. 466 (1936) -- State of New Mexico; overruled to extent it applies to 1926 Executive Order to artificially developed water sources on public lands, Solicitor's Opinion, M-36914, 86 I.D. 553 (1979) -- Federal Water Rights of the National Park Service, Fish & Wildlife Service, Bureau of Reclamation and the Bureau of Land Management.

Opinion of Solicitor, M-34326, 59 I.D. 147 (1945) -- Indian Rights in Columbia River Reservoir; overruled in part, Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations, M-36887, 84 I.D. 72 (1977).

Opinion of Solicitor, M-36047, 60 I.D. 436 (1950) -- Authority of the Department to Engage in Soil Conservation Activities; will not be followed to the extent that it conflicts with these views, Soil and Moisture Conservation Program, M-36677, 72 I.D. 92 (1965).

Opinion of Solicitor, M-36051 (Dec. 7, 1950) -- Oil and Gas Leases on Land in the Strawberry Valley Reclamation Project; modified, Solicitor's Opinion -- Strawberry Valley Project, Utah, M-36863, 79 I.D. 513 (1972).

Opinion of Solicitor, M-36241 (Sept. 22, 1954) -- Permissible Scope of an Indian Tribal Ordinance Authorizing Transaction in Intoxicating Beverages Within Area of Indian Country Subject to Jurisdiction of Such Tribe; overruled as far as inconsistent, Criminal Jurisdiction on the Seminole Reservations in Florida, M-36907, 85 I.D. 433 (1978).

Opinion of Solicitor, M-36410 (Feb. 11, 1957) -- Imposition of North Dakota State Fish & Game Laws on Indian Claiming Treaty & Other Rights to Hunt & Fish; overruled to extent of conflict, M-36936, 88 I.D. 586 (1981).

Opinion of Solicitor, M-36429, 64 I.D. 393 (1957) -- Construction of Recording Requirement of Sec. 4, Act of Aug. 11, 1955 (69 Stat. 681; 30 U.S.C. § 623); no longer followed, B. E. Burnaugh, A-28340 (Supp.), 67 I.D. 366 (1960).

Opinion of Solicitor, M-36456, 64 I.D. 435 (1957) -- Status of Ozette Reservation, Washington; will not be followed to the extent that it conflicts with these views, Status of the Ozette Indian Reservation, Washington, M-36456 (Supp.), 76 I.D. 14 (1969).

Opinion of Solicitor, M-36463, 64 I.D. 351 (1957) -- Can a Partnership Composed Partly of Minors be a Recognized Applicant for Oil and Gas Leases; overruled, Issuance of Mineral Leases to Partnerships, M-36706, 74 I.D. 165 (1967).

Opinion of Solicitor, M-36512 (July 29, 1958) -- Applicability of 43 CFR 192.42(d)(2) to Beds of Non-Navigable Waters Adjacent to Public Lands; overruled to extent inconsistent, Emily K. Connell, A-29176, 70 I.D. 159 (1963).

Table of Overruled and Modified Cases

- Opinion of Solicitor, M-36531 (Oct. 27, 1958) and M-36531 (Supp.) (July 20, 1959) -- Automatic Termination of Unitized Leases for Failure to Pay Rentals; overruled, M-36629, 69 I.D. 110 (1962).
- Opinion of Deputy Solicitor, M-36562 (Aug. 21, 1959) -- Authority of the Secretary of the Interior to Withdraw for a Wildlife Refuge, A Portion of the Tidal & Submerged Lands Within Three Geographical Miles of the Coast Line of Alaska; overruled, Solicitor's Opinion, M-36911, 86 I.D. 151 (1979) -- Effect of Public Land Order 82 on the Ownership of Coastal Submerged Lands in Northern Alaska.
- Opinion of Solicitor, M-36613, 68 I.D. 433 (1961) -- Lands Eligible to be Placed Under Recordable Contracts; distinguished and limited, Westlands Water District Contract, Central Valley Project, Calif. -- Excess Land Limitations, M-36666, 72 I.D. 245 (1965).
- Opinion of Solicitor, M-36767 (Nov. 1, 1967) -- Ownership of Minerals Beneath Certain Patented Lands in San Carlos Mineral Strip; supplementing, Authority of the Secretary of the Interior to Restore Lands in San Carlos Mineral Strip to Tribal Ownership, M-36599, 69 I.D. 195 (1962).
- Opinion of Solicitor, M-36779 (Nov. 17, 1969) -- Appeals of Freeport Sulphur Co. & Texas Gulf Sulphur Co. and M-36841 (Nov. 9, 1971), Appeal of Amoco Production Co.; distinguished with respect to applicability of exemptions (4) & (9) of FOIA to present value estimated; overruled with respect to applicability of exemption (5) of FOIA to presale estimates, M-36918, 86 I.D. 661 (1979).
- Opinion of the Solicitor, M-36886, 84 I.D. 1 (1977) -- Title to Certain Lands within the Boundaries of the Ft. Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884; overruled, Solicitor's Opinion -- Title to Certain Lands Within the Boundaries of the Fort Yuma (Now Called Quechan) Indian Reservation, M-36908, 86 I.D. 3 (1979).
- Opinion of Solicitor, M-36905 (Supp.), 88 I.D. 903 (1981). Earlier opinions on cumulative impact analysis have been withdrawn, M-36938, 88 I.D. 903 (1981).
- Opinion of Solicitor, M-36910, 86 I.D. 89 (1979); modified, M-36910 (Supp.), 88 I.D. 909 (1981).
- Oregon Alder-Maple Co., 1 IBLA 241 (1971); distinguished, Nordic Veneers, Inc., 3 IBLA 86 (1971).
- Page, Ralph, 8 IBLA 435 (1972); explained, Sam Rosetti, 15 IBLA 288, 81 I.D. 251 (1974).
- Phebus, Clayton, 48 L.D. 128 (1921); overruled so far as in conflict, 50 L.D. 281 (1924); overruled to extent inconsistent, Emily E. Connell, A-29176, 70 I.D. 159 (1963).
- Phillips, Cecil H., A-30851 (Nov. 16, 1967); overruled, Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).
- Phillips, Vance W., 14 IBLA 79 (Dec. 11, 1973); modified, Vance W. Phillips, 19 IBLA 211 (1975).
- Provinse, David A., 49 IBLA 134 (1980); overruled to extent inconsistent, 57 IBLA 319 (1981).
- Ranger Fuel Corp., 2 IBMA 163, 80 I.D. 708 (1973); set aside, Memorandum Opinion and Order Upon Reconsideration in Ranger Fuel Corp., 2 IBMA 186, 80 I.D. 604 (1973).
- Rayburn, Ethel Cowgill, A-28866 (Sept. 6, 1962); modified, T. T. Cowgill et al., 19 IBLA 274 (1975).
- Reich, Harry, 27 IBLA 123 (1976); distinguished, 57 IBLA 357 (1981).
- Reliable Coal Corp., 1 IBMA 50, 78 I.D. 199 (1971); distinguished, Zeigler Coal Corp., 1 IBMA 71, 78 I.D. 362 (1971).
- Relocation of Flathead Irrigation Project's Kerr Substation and Switchyard, M-36735 (Jan. 31, 1968); reversed and withdrawn, M-36735 (Supp.), 83 I.D. 346 (1976).
- Resources Exploration & Mining, Inc., 42 IBLA 63 (1979); modified (On Recon.), 43 IBLA 89 (1979).
- Ricci, Charles P., 33 IBLA 288 (1978); set aside and remanded (On Recon.), 34 IBLA 186 (1978).
- Ross, John R., et al., A-27259 (Mar. 12, 1956); set aside in part, Robert C. Ellis, A-29185 (Sept. 9, 1964).
- Schweite, Helena M., 14 IBLA 305 (1974); distinguished, Kristeen J. Burke et al., 20 IBLA 162 (1975).
- Shillander, H. E., A-30279 (Jan. 26, 1965); overruled, 6 IBLA 216, 79 I.D. 416 (1972).
- Simpson, Robert E., A-4167 (June 22, 1970); overruled to extent inconsistent, U.S. v. Union Carbide Corp., 31 IBLA 72, 84 I.D. 309 (1977).
- Smith, James W. (IBLA 80-57 & IBLA 80-67), 46 IBLA 233 (1980); IBLA 80-67 dismissed; 55 IBLA 390 (1981).
- Smith, M. P., 51 L.D. 251 (1925); overruled, Solicitor's Opinion -- Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888, 84 I.D. 54 (1977).
- Standard Oil Co. of California et al., 76 I.D. 271 (1969); no longer followed, 5 IBLA 26, 79 I.D. 23 (1972).
- Star Gold Mining Co., 47 L.D. 38 (1919); distinguished, U.S. v. Alaska Empire Gold Mining Co., 71 I.D. 273 (1964).
- State Production Taxes on Tribal Royalties from Leases Other than Oil and Gas, M-36345 (May 4, 1956); superseded to the extent that it is inconsistent, Solicitor's Opinion -- Tax Status of the Production of Oil and Gas from Leases of the Ft. Peck Tribal Lands Under the 1938 Mineral Leasing Act, M-36896, 84 I.D. 905 (1977).
- Superior Oil Co., A-28897 (Sept. 12, 1962); distinguished in dictum, 6 IBLA 318, 79 I.D. 439 (1972).
- Tevuk, Dwight (Deceased), 22 IBLA 296 (1975); reversed and remanded (On Recon.), 29 IBLA 296 (1975).

Table of Overruled and Modified Cases

Thomas, John C. & Martha W., d.b.a. Tungsten Mining Co., 53 IBLA 182 (1981); vacated (On Recon.), 59 IBLA 364 (1981).

Tugatuk, Anuska, 23 IBLA 182 (1976); vacated (On Recon.), 59 IBLA 345 (1981).

Union Oil Co., 56 IBLA 206 (1981); vacated (On Recon.), 58 IBLA 166 (1981).

U.S. v. Barngrover (On Rehearing), 57 I.D. 533 (1942); overruled in part, U.S. v. Robinson, 21 IBLA 363, 82 I.D. 414 (1975).

U.S. v. Kosanke Sand Corp., 3 IBLA 189, 78 I.D. 285 (1971); set aside and case remanded, 12 IBLA 282, 80 I.D. 538 (1973).

U.S. v. McClarty, 71 I.D. 331 (1964); vacated and case remanded, 76 I.D. 193 (1969).

U.S. v. Melluzzo, A-31042, 76 I.D. 181 (1969); set aside (On Recon.), 1 IBLA 37, 77 I.D. 172 (1970).

Wasserman, Jacob N., A-30275 (Sept. 22, 1964); overruled, 6 IBLA 216, 79 I.D. 416 (1972).

Wassillie, Elia, 23 IBLA 276 (1976); vacated (On Recon.), 59 IBLA 361 (1981).

Waters, Valda, 44 IBLA 272 (1979); overruled to extent inconsistent, Harvey A. Clifton et al., 60 IBLA 29 (1981).

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (1978); modified, James W. Smith (On Recon.), 55 IBLA 390 (1981).

Western Slope Gas Co., 40 IBLA 280; reconsideration denied, 43 IBLA 259 (1979); overruled in pertinent part, Solicitor's Opinion, M-36917, 87 I.D. 27 (1980).

Weyerhaeuser Co., 33 IBLA 254 (1978); reversed and remanded (On Recon.), 34 IBLA 244 (1978).

Williamson, Lee B., 54 IBLA 326 (1981); overruled to extent inconsistent, 57 IBLA 319 (1981).

Wilson Earl R., 21 IBLA 392 (1975); modified and distinguished, Cecil A. Walker, 26 IBLA 71 (1976).

Winchester Land and Cattle Co., 65 I.D. 148 (1958); and E. W. Davis, A-29889 (Mar. 25, 1964); no longer followed in part, Ruth E. Han, 13 IBLA 296, 80 I.D. 698 (1973).

Winters, Raymond W., A-28125 (Jan. 15, 1960); overruled, Forest Oil Corp., 15 IBLA 33 (1974).

Wolf Joint Ventures, 75 I.D. 137 (1968); distinguished, U.S. v. Union Carbide Corp., 31 IBLA 72, 84 I.D. 309 (1977).

Wostenberg, William, A-26450 (Sept. 5, 1952); distinguished in dictum, 6 IBLA 318, 79 I.D. 439 (1972).

Young Bear, Victor, Estate of, 8 IBIA 130, 87 I.D. 311, (1980); reversed by Supp., 8 IBIA 254, 88 I.D. 410 (1981).

Zeigler Coal Co., 4 IBMA 139, 82 I.D. 221, (1975), OSHD par. 19,638 (1975); overruled in part, Alabama By-Products Corp. (On Recon.), 7 IBMA 85, 83 I.D. 574 (1976).

* * * * *

TABLE OF SUITS FOR JUDICIAL REVIEW OF DEPARTMENTAL DECISIONS
BOTH PUBLISHED AND UNPUBLISHED

LIX

<u>Page(s)</u>	<u>Page(s)</u>
Adams, Alonzo, <u>et al.</u> v. Witmer <u>et al.</u> -----CIV	Austin, Buck, Lilly, Jack & Billy Chief, Alta Rose Albert, Betty Crank, Manymule's Daughter #2, Steven & Kee Lake & Kee Begay v. Thompson, Morris, Comm'r of Indian Affairs-----XCIV
Adams, Bill, <u>et al.</u> v. Andrus-----LXXIII	Aztec Exploration & Development Co. v. Dept. of the Interior <u>et al.</u> -----LXXIX
Adler Construction Co. v. U.S.-----LXXIII	Babcock, James, <u>et al.</u> v. Udall-----LXXIV
Ahrens, Robert J., <u>et al.</u> v. Andrus-----LXXXII	Babcock, J. C. & L. G. Shipp v. The Secretary of the Interior-----LXXIV
Akers, Dolly Cusker v. Dept. of the Interior-----LXXIII	Babington, Charles J. v. Udall-----CI
Alaska, State of v. Alaska Native Claims Appeal Board <u>et al.</u> -----LXXXI	Baciarelli, Elverna Yevonne Clairmont v. Morton-----LXXIX
Alaska, State of v. Andrus <u>et al.</u> -----LXXIII	Badger Coal Co. v. Andrus-----LXXIV
Albrechtsen, Ray H. & Mountain States Corp. v. Morton-----LXXXVI	Badger Coal Co. v. Andrus <u>et al.</u> -----LXXIV
Alexander, Ken & Kenneth D. v. Secretary-----CIV	Bagley, David C., <u>et al.</u> v. Udall <u>et al.</u> -----LXXIV
Alexander, William T. v. Andrus <u>et al.</u> -----LXXIII	Baker, Melton E. v. U.S., Kleppe, <u>et al.</u> -----CIV
Alexander, William T. v. Frizzell, Kent, Acting Secretary, <u>et al.</u> -----LXXIII	Baker, Phil v. Dept. of the Interior-----LXXV
Allen, E. H., <u>et al.</u> v. Udall-----LXXIII	Baldwin, H. E. & John R. Keeling v. Morton <u>et al.</u> -----LXXV
Allen, William v. Morton-----LXXIII	Ball Brothers Sheep Co. v. Morton-----LXXV
Allied Contractors, Inc. v. U.S.-----LXXIII	Ballard E. Spencer Trust, Inc. v. Morton <u>et al.</u> -----LXXV
Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Morton-----C	Barash, Max v. McKay-----LXXV
American Coal Co. v. Dept. of the Interior-----LXXIII	Barnard-Curtiss Co. v. U.S.-----LXXV
American Telephone & Telegraph Co., v. Dept. of the Interior, Morton, <u>et al.</u> -----LXXIV	Barrows, Esther, as an Individual & as Executrix of the Last Will of E. A. Barrows, Deceased v. Hickel-----CIV
Anderson, A. F., <u>et al.</u> v. Morton & The Board of Land Appeals-----CIV, CXIII	Bartell, A. O. v. Andrus-----CV
Anderson, L. Robert v. Udall-----XCVI	Barton, Harold E. L. v. Udall <u>et al.</u> -----CXII
Arjay Oil Co. v. Andrus, Cecil, Curt Berklund, <u>et al.</u> -----LXXIII	Barton, R. M. v. Morton <u>et al.</u> -----LXXV
Arjay Oil Co. v. Andrus, Cecil D., George L. Turcott, <u>et al.</u> -----LXXIV	Bass Enterprises Production Co. v. Andrus-----LXXV
Arnold, Hillin L., <u>et al.</u> v. Morton <u>et al.</u> -----CII	Battle Mountain Co. v. Udall-----LXXV, LXXXIX
Ashley, Eleanor P., as Personal Representative of Estate of Charles D. Ashley v. Andrus-----LXXIV	Bay Construction Co. <u>et al.</u> v. U.S.-----LXXV
Atlantic Richfield Co. v. Hickel-----CI	Beaird, Charles Thomas v. Andrus & U.S.-----CV
Atlantic Richfield Co. & Pasco, Inc. v. Morton <u>et al.</u> -----LXXIV, XC	Belknap, Robert E., III, <u>et al.</u> v. Watt <u>et al.</u> -----LXXV
Attocknie, Willis v. Udall-----LXXIV	Bender, Jack J. v. Watt <u>et al.</u> -----LXXV
Atwood <u>et al.</u> v. Udall-----CIII	

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Bennett, William, Paul F. Goad & United Mine Workers <u>v.</u> Kleppe-----LXXVI	Brown, Penelope Chase, <u>et al.</u> <u>v.</u> Udall-----CIII
Benson-Montin-Greer Drilling Corp. <u>v.</u> Andrus <u>et al.</u> -----LXXV	Brown, Robert G., Jr., <u>et al.</u> <u>v.</u> U.S.-----XCVIII
Bergesen, Sam <u>v.</u> U.S.-----LXXV	Brown, Tom <u>v.</u> U.S. Dept. of the Interior-----LXXVI
Bigheart, Velma Rose, Surviving Spouse of William Bigheart, Jr., Deceased Unallotted Osage Indian <u>v.</u> Pappan, John, Supt. Osage Indian Agency, <u>et al.</u> -----LXXVI	Brubaker, Earl J., <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----CVII
Billmeyer, John, etc. <u>v.</u> U.S.-----LXXXVI	Brubaker, R. W., <u>et al.</u> <u>v.</u> Morton-----CV
Bishop, Clyde W. <u>v.</u> Udall-----LXXXVI	Bryant, Joe E. <u>v.</u> Secretary of the Interior-----CV
Bishop Coal Co. <u>v.</u> Kleppe-----C	Buch, R. C. <u>v.</u> Udall-----LXXVI
Black Fox Mining & Development Corp. <u>v.</u> Andrus <u>et al.</u> -----LXXVI	Bunch, Evelyn M. <u>v.</u> Kleppe-----LXXVI
Blackwood Fuel Co. <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----LXXVI	Bunkowski, Henrietta & Andrew Julius <u>v.</u> Applegate, L. Paul, District Manager, BLM, Thomas S. Kleppe, Secretary of the Interior, <u>et al.</u> -----CV
Block, J. L. <u>v.</u> Morton-----CV	Bunn, Thomas M. <u>v.</u> Udall-----XCVIII
Blue Bell Gold Mining Co. <u>v.</u> Morton <u>et al.</u> -----CV	Burglin, C., A. E. Greig, Owen Jennings, <u>et al.</u> <u>v.</u> Kleppe <u>et al.</u> -----LXXVII
Blythe, Catherine R. <u>v.</u> Kleppe-----CV	Burglin, C., Dennis Krize, Mark & Kenneth Ringstad, Lloyd Burgess, <u>et al.</u> <u>v.</u> Hathaway <u>et al.</u> -----CXV
Bobb, Wilson, Sr. <u>v.</u> U.S. & Andrus-----LXXVI	Burglin, C., Earnest G. & Dora A. Carter & Michael F. Scanlan <u>v.</u> U.S., Morton, <u>et al.</u> -----C
Boesche, Fenelon <u>v.</u> Seaton-----LXXVI	Burglin, C. & Helen Bailey <u>v.</u> U.S., Morton, <u>et al.</u> -----C
Booth, Lloyd W. <u>v.</u> Hickel-----CV	Burglin, C. & R. C. Bailey <u>v.</u> U.S., Morton, <u>et al.</u> -----C
Bowen <u>v.</u> Chemi-Cote Perlite-----LXXVIII	Burglin, C. & William D. Sexton <u>v.</u> Morton <u>et al.</u> -----C
Bowman, James Houston <u>v.</u> Udall-----XCIX	Burkhardt, Walter H., <u>et al.</u> <u>v.</u> Morton <u>et al.</u> -----CIV, CXIII
Boyd, Jack Zemmy, Jr. <u>v.</u> Andrus-----CV	Burkybile, Doris Whiz <u>v.</u> Smith, Alvis, Sr., as Guardian Ad Litem for Zelma, Vernon, Kenneth, Mona & Joseph Smith, Minors, <u>et al.</u> -----CXIV
Boyle, Alice A. & Carrie H. <u>v.</u> Morton-----CV	Bushman Construction Co. <u>v.</u> U.S.-----LXXVII
BPS Associates <u>et al.</u> <u>v.</u> U.S., Andrus, <u>et al.</u> -----LXXVII	Byrd, Norman R. <u>v.</u> Andrus & U.S.-----LXXVII
Bradford Mining Corp., Successor of J. R. Osborne <u>v.</u> Andrus-----CX	Calder, Zelf S. <u>v.</u> Udall-----LXXVII
Brandt, Mary L., & Natalie Z. Shell <u>v.</u> Udall-----LXXXV	Calhoun & Howell of Oregon, Ltd. <u>v.</u> Hickel-----CV
Brazie, George B., individually & as the Executor of the Last Will & Testament of Julius Benter, Deceased <u>v.</u> Morton-----LXXV	California Ass'n of 4WD Clubs, Inc. <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----LXXVII
Brick, Irving B. <u>v.</u> Andrus-----LXXVI	California Co., The <u>v.</u> Udall-----LXXVII
Brookhaven Oil Co. <u>v.</u> Seaton-----LXXVI	California Oil Co. <u>v.</u> Sec.-----CII
Brown, H. D. <u>v.</u> U.S. & Hickel-----LXXIX	California Portland Cement Co. <u>v.</u> Andrus <u>et al.</u> -----LXXVII
Brown, Jessie A. & W. L. Tallon, Jr. <u>v.</u> Andrus <u>et al.</u> -----LXXVI	
Brown, Melvin A. <u>v.</u> Udall-----LXXVI	

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Cameron Parish Police Jury <u>v.</u> Udall <u>et al.</u> -----LXXVII	Commercial Metals Co. <u>v.</u> U.S.-----LXXIX
Canon, Jack D. & Billie B., <u>et al.</u> <u>v.</u> Andrus-----LXXVII	Confederated Tribes & Bands of the Yakima Indian Nation <u>v.</u> Kleppe, Thomas, & Philip Brendale-----CXIII
Canterbury Coal Co. <u>v.</u> Kleppe-----LXXVII	Confederated Tribes & Bands of the Yakima Indian Nation <u>v.</u> Kleppe, Thomas, & Erwin Ray-----LXXXIII
Capital Fuels, Inc. <u>v.</u> Andrus-----LXXVII	Conoco, Atlantic Richfield Co. & Tenneco Oil Co. <u>v.</u> Andrus-----CII
Carl, Jack E. <u>v.</u> Seaton-----LXXVIII	Consolidated Gas Supply Corp. <u>v.</u> Udall <u>et al.</u> -----LXXVI, LXXXV, LXXXIX
Carr, Marie Tieyah <u>v.</u> Andrus-----CIII	Consolidation Coal Co. <u>v.</u> Andrus-----LXXIX
Carson Construction Co. <u>v.</u> U.S.-----LXXVIII	Constitution Petroleum Co., Arrow Petroleum Co. & East Utah Mining Co. <u>v.</u> Kleppe <u>et al.</u> -----LXXIX
Casey, John Jay <u>v.</u> U.S., Morton, <u>et al.</u> -----LXXVIII	Continental Oil Co. <u>v.</u> Udall <u>et al.</u> -----LXXIX
Century Industries-Flagstaff <u>et al.</u> <u>v.</u> U.S., Morton, <u>et al.</u> -----CVII	Converse, Ford M. <u>v.</u> Udall-----CVI
C. F. Lytle Co. <u>v.</u> U.S.-----LXXVIII	Cooper, Gordon L. <u>v.</u> Andrus <u>et al.</u> -----LXXIX
Chambers, Evelyn <u>v.</u> Andrus, Cecil D. & Paul Howard, State Director, BLM-----LXXVIII	Copper Valley Machine Works, Inc. <u>v.</u> Andrus-----LXXIX
Chaparral Resources, Inc. <u>v.</u> Andrus <u>et al.</u> -----LXXVIII	Cornell, Jay F. <u>v.</u> Morton-----LXXX
Chapman, John C., <u>et al.</u> <u>v.</u> U.S.-----CV	Cornia, William D., <u>et al.</u> <u>v.</u> Udall-----LXXX
Charlestone Stone Products Co. <u>v.</u> Morton-----CV	Cortella Coal Corp. & Alaska Mineral Exploration Co. <u>v.</u> McVee, Curtis V., State Dir., BLM, Alaska <u>et al.</u> -----LXXX
Chournos, Nick <u>v.</u> U.S.-----CV	Cosmo Construction Co. <u>et al.</u> <u>v.</u> U.S.-----LXXX
Chournos, Nick, <u>et al.</u> <u>v.</u> U.S. <u>et al.</u> -----CV	Cotton Petroleum Corp. <u>v.</u> Andrus <u>et al.</u> -----LXXX
Christiansen Oil & Gas, Inc. <u>v.</u> Andrus, Cecil D. & Daniel P. Baker-----LXXVIII	Couch, D. Q. (Bill) <u>v.</u> Udall-----LXXXVII
Christy Corp. <u>v.</u> U.S.-----LXXVIII	Coyer, Donald W. & Fred L. Engle, d/b/a Resource Service Co. <u>v.</u> Andrus, Cecil D., Alfred L. Easterday & J. Roe-----LXXXI
Citizens Committee to Save our Public Lands, Hastings Environmental Law Society <u>v.</u> Kleppe <u>et al.</u> -----LXXVIII	Coyer, Donald W. & Fred L. Engle, d/b/a Resource Service Co. <u>v.</u> Andrus, Cecil D., Wyoming State Office, BLM-----LXXXI
Clark, County of <u>v.</u> Kleppe <u>et al.</u> -----LXXVIII	Crawford, Jesse W. <u>v.</u> Udall-----CVI
Clarkson, Stephen H. <u>v.</u> U.S.-----LXXVIII	Crawford, Martha Alfreda Racine <u>et al.</u> <u>v.</u> Andrus-----XCVII
Clear Gravel Enterprises <u>v.</u> Keil, Nolan, State Dir., BLM, Nevada, <u>et al.</u> -----CV	Crenshaw, Lillian, <u>et al.</u> <u>v.</u> Sec.-----LXXXIV
Clements, John Raymond <u>v.</u> Seaton-----CVI	Crouse, Elizabeth Barndt, <u>et al.</u> <u>v.</u> K. Ranch, Inc., Udall, <u>et al.</u> -----LXXX
COAC, Inc. <u>v.</u> U.S.-----LXXIX	Crow, Elsie May Pikok <u>v.</u> U.S. & Morton-----LXXX
Cobb, P. & Osro <u>v.</u> U.S.-----LXXIX	Crow, Jerry L. <u>v.</u> Andrus & U.S.-----CVI
Cody, Elsie <u>v.</u> Hickel-----CVI	Cuccia, Louise & Shell Oil Co. <u>v.</u> Udall-----XCI
Cohen, Hannah & Abram <u>v.</u> U.S.-----LXXIX	
Colorado-Ute Electric Ass'n <u>v.</u> Andrus <u>et al.</u> -----LXXIX	
Colson, Barney R. <u>v.</u> Morton-----LXXIX	
Colson, Barney R., <u>et al.</u> <u>v.</u> Udall-----LXXIX	

Page(s)	Page(s)
Cuccia, Victoria L. <u>v. Udall</u> -----CIII	Edwards, Adrian, Trustee for Ross Stegman, & Real Party in Interest <u>v. Morton</u> -----CII
D'Amico, Vincent M., <u>et al.</u> <u>v. Watt et al.</u> -----LXXX	Edwards, Lawrence <u>v. Udall</u> -----LXXXI
Daniels, Elizabeth, <u>et al. v.</u> Johnson, Supt., Osage Indian Agency & Udall-----LXXX	Edwards, Wesley Laverne <u>v. U.S. et al.</u> -----LXXXI
Danks, Edward S., <u>et al. v.</u> Fields, Harrison, <u>et al.</u> -----LXXXII	Ekker, Riter & Kerry <u>v. Andrus,</u> Cecil & BLM-----LXXXI
Darling, Bernard E. <u>v. Udall</u> -----LXXXVIII	Eldridge, Hal W., <u>et al. v. Sec.</u> -----CX
David Excavating Co. <u>v. Watt</u> -----LXXX	Elkhorn Mining Co. <u>v. Morton</u> -----CVI
Dawson, Ruby, <u>et al. v. Kleppe</u> -----LXXVI	Eluska, Heldina, Individually & on behalf of all others similarly situated <u>v. Kleppe,</u> Thomas, Individually & in his official capacity as Secretary of the Interior-----LXXXI
Dawson, Susan <u>v. Andrus</u> -----LXXX	Enevoldsen, H. J. <u>v. Andrus et al.</u> -----LXXXI
Day, Oma Belle <u>v. Hickel et al.</u> -----LXXX	Engle, Fred L., <u>et al. v. Watt et al.</u> -----XCVIII
Denham, Bradley F. <u>v. Andrus</u> -----CVI	Equity Oil Co. <u>v. Udall</u> -----CIII
Denison, Marie W. <u>v. Udall</u> -----CVI	Ernst, Henry J. <u>v. Sec.</u> -----LXXXI
Devenny, J. S. <u>v. Udall</u> -----CVI	Eskra, Constance Jean Hollen <u>v.</u> Morton <u>et al.</u> -----CXIII
Diamond Ring Ranch, Inc. <u>v.</u> Morton <u>et al.</u> -----LXXVII	Evans, David H. <u>v. Morton</u> -----LXXXII
Dietemann, Aloys A. & Doris E. <u>v. Kleppe et al.</u> -----CVI	Exxon Co., U.S.A. <u>v. Andrus</u> -----CII
DiMarco, Richard J. <u>v.</u> Watt <u>et al.</u> -----LXXX	Farington, Elsie V. <u>v. Morton</u> -----LXXXII
Dlouhy, Francis N. <u>v. Seaton</u> -----CVI	Farrelly, John J. & the Fifty-One Oil Co. <u>v. McKay</u> -----LXXXII
Doria Mining & Engineering Corp. <u>v. Morton et al.</u> -----LXXVII	Faulkner, Ralph G., John L., Laura Jo, R. Fred & Susan L. <u>v. Kleppe et al.</u> -----LXXXII
Downing, Arthur, Alan Winter, Alan Troxler & Headwaters <u>v.</u> Frizzell, Kent, Acting Secretary, <u>et al.</u> -----LXXXV	Ferguson, Chester H., Stella Ferguson Thayer & Howell L. Ferguson <u>v. Morton et al.</u> -----LXXXII
Downtown Properties, Inc. <u>v.</u> Andrus <u>et al.</u> -----LXXXI	Ferry, Robert V. & Irving Baker <u>v.</u> Udall-----CI
Dredge Co. <u>v. Husite Co.</u> -----LXXXI	Finnesand, Hannah, Flora Rondeau, <u>et al. v. Morton et al.</u> -----LXXXII
Dredge Corp., The <u>v. Morton et al.</u> -----CVI	Fitzgerald, Kathryn R. & John Holden <u>v. Hickel</u> -----CVII
Dredge Corp., The <u>v. Palmer</u> -----LXXIX	Foote Mineral Co. <u>v. Andrus et al.</u> -----LXXXII
Dredge Corp., The <u>v. Penny</u> -----LXXXI, CVI	Foote Mineral Co. <u>v. U.S.</u> -----LXXXII
Dredge Corp., The <u>v. U.S.</u> DOI <u>et al.</u> -----CVI	Forsberg, Carl E. <u>v. Udall</u> -----LXXXII, LXXXIX
Drummond Coal Co. <u>v. Andrus et al.</u> -----LXXXI	Foster, Everett, <u>et al. v. Seaton</u> -----CVII
Duesing, Bert F. <u>v. Udall</u> -----CIII	Foster, Gladys H., Executrix of the Estate of T. Jack Foster <u>v. Udall,</u> Stewart L., Boyd L. Rasmussen-----LXXXII
Duval, Maurice, <u>et al. v. Morton</u> -----CVI	Foster, Katherine S. & Brook H. Duncan II <u>v. Udall</u> -----LXXV
Duvels, Inc., West Park Interna- tional, Inc., <u>et al. v. Frizzell,</u> Kent, Acting Secretary-----CXV	
Eastover Mining Co. <u>v. Andrus</u> <u>et al.</u> -----LXXXI	

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Foster, Robert K., et al. v. Manager, Riverside Land Office, et al.-----LXXXII	Granat, Ray, et al. v. Kleppe, Thomas S., & Dept. of the Interior-----LXXXIV
Freeman, Autrice Copeland v. Udall-----LXXIV, LXXIX	Grewell, LaVonne V. v. Kleppe-----LXXXIV
Freese, Andrew L., II v. Andrus-----CVII	Grigg, Golden T., et al. v. U.S. & Morton-----CVII
Fuel Resources Development Co. v. Andrus et al.-----LXXXIII	Griggs, William H. v. Solan-----LXXXVI
Fullerton, Harold W. v. Andrus-----LXXXIII	Grindstone Butte Project et al. v. Kleppe et al.-----LXXXIV
Funderburg, Coral V. v. Udall et al.-----LXXXIII	Growing Thunder, Nancy & Vernon, Minors, by & through their next friend & Guardian Ad Litem, Dale Running Bear v. Morton et al.-----LXXXIV
Gabbs Exploration Co. v. Udall-----LXXXIII, CIII	Grynberg, Celeste C. & Dean G. Smerhoff as Co-Trustees for the Stephen Mark Grynberg Trust v. Andrus et al.-----LXXXIV
Gaffney, Bernard J. & Myrle A. v. Udall-----LXXXIII	Gucker, George L. v. Udall-----XCV
Gallagher, John A., et al. v. Andrus et al.-----LXXXIX	Gulf Oil Corp. & Mobil Oil Corp. v. Hathaway et al.-----LXXXIV
Gardener, Jack L. v. Secretary-----CVII	Gullo, Thomas V. & Joseph L. Randazzo v. Dept. of the Interior-----LXXXIV
Garcia, Barbara v. Andrus et al.-----XCVII	Gunsight Mining Corp. v. Morton-----CVII
Garigan, Philip T. v. Udall-----XCI	Gustav Hirsch Organization, Inc. v. U.S.-----LXXXIV
Garner, Fred & Eileen v. U.S. et al.-----CVII	Guthrie Electrical Construction Co. v. U.S.-----LXXXIV
Garrigus, Forest O., Jr., et al. v. Andrus-----CX	Haas, Walter S., Jr. v. Watt et al.-----LXXXIV
Garthofner, Stanley v. Udall-----LXXXIII	Hall, Charles, Jr. & Ruby Martin Archdale v. Andrus-----LXXXIV
Garula, Fred v. Udall-----CVII	(Hall), Georgette B. Lee v. Udall-----XCVII
Gary, Samuel v. Udall-----XCIX	Hall, William & Diane v. Sec.-----LXXXV
Geikaunmah, Juanita Mammedaty & Imogene Geikaunmah Carter v. Morton-----LXXXIII	Hallenbeck, Charles V. Jr. & Clyde A. v. Bureau of Reclamation-----CVII
Gelb, Sidney v. Kleppe-----LXXXIII	Ham, J. E., et al. v. Andrus et al.-----LXXXIX
General Excavating Co. v. U.S.-----LXXXIII	Hamel, Lester J. v. Nelson et al.-----LXXXV
Geosearch, Inc. v. Andrus et al.-----LXXXIII	Hannifin, D. L. v. Hickel et al.-----CII
Geosearch, Inc. v. Andrus, Lieurance, et al.-----LXXXIII	Hansen, Raymond J. v. Seaton-----LXXXII
Geosearch, Inc. v. Watt et al.-----LXXX, LXXXVI	Hansen, Raymond J., et al. v. Udall-----LXXXV
Geosearch, Inc. & Glasnapp, Larry R. v. Watt et al.-----LXXV	Harrell, Beverly v. Hillsamer, A. John, et al.-----LXXXV
Geosearch, Inc. & Maslan, Herbert v. Watt et al.-----CXV	Harris, Royal, et al. v. U.S., Cecil Andrus, et al.-----LXXXV
Gerttula, Nelson A. v. Udall-----LXXXIII	Harvey, Paul, Grace Ernest & Lalo Enriquez v. Udall-----LXXXV
Goad, Charles M. v. U.S. & Morton-----XCIX	Haskins, Richard P., for Himself & as Administrator of the Estate of Bartholomew H. Haskins, Deceased v. Udall-----CVII
Golden Eagle Mining Corp. v. Udall-----CVII	
Gonsales, Charles B. v. Seaton-----LXXXIV	
Gonsales, Charles B. v. Udall-----LXXXIV	
Gonzales, John v. Udall-----LXXXIV	
Goodwin, James C. v. Andrus, Dale R., State Dir., BLM, et al.-----LXXXIV	

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Hat Ranch, Inc. <u>v. Kleppe et al.</u> -----LXXXV	Humboldt Placer Mining Co. & Del De Rosier <u>v. Sec. of the Interior</u> -----CVIII
Hatter, Richard L., <u>et al. d/b/a</u> Chad Enterprise <u>v. U.S.</u> -----CXIV	Hunter, Dan H. & Mountain States Resources Corp. <u>v. Morton</u> -----LXXXVI
Hayes, Joe <u>v. Seaton</u> -----CIII	H & W Oil Co. <u>v. Kleppe</u> -----LXXXVI
Hayes, Karen, Administratrix of the Estate of Keith C. Hayes, Deceased; Dorothy Smith <u>v. Andrus</u> -----CI	Hyrup, John V. <u>v. Morton</u> -----LXXXVI
Heden, Gerald D. & Sharon A., John D. & Diane E. Prichard <u>v. Secretary</u> -----CVII	Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. <u>v. Morton</u> -----CVIII
Heffelman, Charles W. <u>v. Udall</u> -----CXIV	Independent Quick Silver Co., an Oregon Corp. <u>v. Udall</u> -----CVIII
Held, Joel <u>v. Andrus</u> -----LXXXII	Inlet Oil Corp. & Raymond J. Ellis <u>v. Hickel</u> -----XCVIII
Henault Mining Co. <u>v. Tysk et al.</u> -----CVII	International Union of United Mine Workers of America <u>v. Hathaway</u> -----CXV
Henri, Joseph R. & Aletha <u>v.</u> <u>Andrus et al.</u> -----CVII	International Union of United Mine Workers of America <u>v. Morton</u> -----LXXXI
Henrikson, Charles H., <u>et al. v.</u> <u>Udall et al.</u> -----CVII	Island Creek Coal Co., Rebel Coal Co. <u>v. Andrus et al.</u> -----LXXXVI
Hickey, Thomas D. <u>v. U.S., Interior</u> Board of Land Appeals, <u>et al.</u> -----LXXXV	Iverson, C. J. <u>v. Frizzell, Kent,</u> Acting Secretary & Dorothy D. Rupe-----LXXXVI
Hicks, Taylor T., <u>et al. v. U.S.,</u> <u>Udall, Secretary of the Interior</u> -----CVIII	James, Don & Winona <u>v. Gomez, Mabel</u> George, <u>et al.</u> -----XCVI
Higbee, Ernest, <u>et al.</u> <u>v. Morton et al.</u> -----CVIII	J. A. Terteling & Sons, Inc. <u>v. U.S.</u> -----LXXXVII
Higgins, Jesse, <u>et al. v. Andrus</u> -----LXXXV	J. D. Armstrong, Inc. <u>v. U.S.</u> -----LXXXVII
Hiko Bell Mining & Oil Co., a Utah Corp. <u>v. Kleppe</u> -----LXXXV	Jensen-Rasmussen & Co. <u>v. U.S.</u> -----LXXXVII
Hiko Bell Mining & Oil Corp. <u>v.</u> <u>Andrus et al.</u> -----XCVI	John Walters Coal Co. <u>v. Watt et al.</u> -----LXXXVII
Hill, Houston Bus <u>v. Morton</u> -----XCVIII	Johnson, Calvin C. <u>v. Andrus et al.</u> -----LXXXVII
Hill, Houston Bus & Thurman S. Hurst <u>v. Morton</u> -----XCVIII	Johnson, Dale <u>v. Udall</u> -----LXXXVII
Hinton, S. Jack, <u>et al. v. Udall</u> -----XCIX	Johnson, Leroy S., <u>et al. v. U.S. &</u> <u>Andrus</u> -----CVIII
Holland Livestock Ranch <u>et al. v.</u> <u>U.S., Andrus, et al.</u> -----LXXVI	Johnson, Leroy V. & Roy H., Marlene Johnson Exendine & Ruth Johnson Jones <u>v. Kleppe</u> -----LXXIX
Holt, Kenneth, etc. <u>v. U.S.</u> -----LXXXV	Johnson, Menzel G. <u>v. Morton et al.</u> -----LXXXVII
Hope Natural Gas Co. <u>v. Udall</u> -----LXXXV, LXXXIX	Johnson, R. B. <u>v. Udall</u> -----CVIII
House, Charles & Eleanor Lee Burnham, as Sole Heir & Devisee of Geneva Tullis Skinner, Deceased <u>v. Andrus et al.</u> -----LXXXV	Johnson, Robert N., <u>et al. & Thelma A.</u> Johnson as Individual & Executrix of Nolan F. Flutz Estate <u>v. Udall</u> -----CVIII
Howey, Elbert F. <u>v. Morton</u> -----LXXXVI	June Oil & Gas, Inc. & Cook Oil & Gas, Inc. <u>v. Andrus et al.</u> -----LXXXVII
Hudson, David Russell <u>v. U.S.,</u> Thomas S. Kleppe, <u>et al.</u> -----LXXXVI	Kadayso, Ruth Maynahonah <u>v. Udall</u> -----XCI
Huff, Thomas J. <u>v. Asenap et al.</u> -----CXV	Kadow, Kenneth J., <u>et al. v. Udall</u> -----LXXXVII
Huff, Thomas J. <u>v. Udall</u> -----CXV	Kaiser Steel Corp. <u>v. Office of</u> Surface Mining & Enforcement-----LXXXVII
Hugg, Harlan H., <u>et al. v. Udall</u> -----CIII	Kalerak, Andrew J., Jr., <u>et al. v.</u> <u>Udall</u> -----LXXIII

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Kanawah Coal Co. <u>v.</u> Andrus-----LXXXVII	La Rue, W. Dalton, Sr. <u>v.</u> Udall-----LXXXVIII
Keans, R. A. <u>v.</u> Udall <u>et al.</u> -----LXXXVII	La Rue, W. Dalton, Sr., & Juanita S. <u>v.</u> U.S. & Morton <u>et al.</u> -----LXXXVIII
Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. <u>v.</u> Morton <u>et al.</u> -----LXXXVII	Laughlin, Donald J. <u>v.</u> Kleppe, Thomas S., Individually & as Secretary of the Interior, <u>et al.</u> -----LXXXVIII
Kindness, James Harold & Sherman Wilson, Jr. <u>v.</u> Frizzell, Kent, Acting Secretary-----XCIV	Lawler, Robert, <u>et al.</u> <u>v.</u> Hickel-----XCVIII
King, David L. & Kathryn <u>v.</u> Bureau of Land Management-----CVIII	L. B. Samford, Inc. <u>v.</u> U.S.-----LXXXVIII
King, John J. <u>v.</u> Udall-----LXXXVII, XCIX	Lewis, Anita Sampson <u>v.</u> Andrus-----CXV
King, John J., <u>et al.</u> <u>v.</u> Udall-----LXXXVII	Lewis, Betty J. <u>v.</u> Udall-----XCI
King, John J. & Dorothy W. <u>v.</u> Udall-----LXXXVIII	Lewis, Gary Carson, etc., <u>et al.</u> <u>v.</u> General Services Admin. <u>et al.</u> -----XCIV
King, William C. <u>v.</u> U.S. & Secretary of the Interior <u>et al.</u> -----CVIII	Lewis, Perley M., <u>et al.</u> <u>v.</u> Udall-----LXXXIX
Kirkpatrick Oil & Gas Co. <u>v.</u> U.S. & Thomas S. Kleppe-----LXXXVIII	Lewis, Perley M., <u>et ux.</u> <u>v.</u> Udall <u>et al.</u> -----LXXXIX
Klatt, Margaret L. <u>v.</u> Kleppe, Thomas S., Individually & in his official capacity as Secretary of the Interior <u>et al.</u> -----LXXXVIII	Lewis, Ruth Pinto, Individually & as the Administratrix of the Estate of Ignacio Pinto <u>v.</u> Kleppe, Thomas S., Secretary of the Interior, & U.S.-----LXXXIX
Knowlton, Elsie Marie & Horace J. <u>v.</u> Hickel-----CVIII	Lichtenstein, Dr. Heinz & Ursula, <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----LXXXIX
Kohl, Charles W. & Cora A. <u>v.</u> Yurich, Steve & Morton, <u>et al.</u> -----CVIII	Lindgren, Roy <u>v.</u> Andrus-----LXXXIX
Krueger, Max L. <u>v.</u> Morton-----LXXIV	Ling, Warren Dale & Francis Miles <u>v.</u> Frizzell, Kent, Acting Secretary-----XC
Krueger, Max L. <u>v.</u> Seaton-----LXXXVIII	Linn Land Co. <u>et al.</u> <u>v.</u> Udall-----LXXXII, LXXXIX, XCVII, C
Krumtum, James M. & Cale M. Shearer <u>v.</u> Udall <u>et al.</u> -----LXXXVIII	Lisco, Barbara C. <u>v.</u> Hathaway <u>et al.</u> -----XCVII
Laatz, Gordon W. & Alleyne J. <u>v.</u> Morton <u>et al.</u> -----XCIX	Liss, Merwin E. <u>v.</u> Seaton-----LXXXIX
Lade, Richard M., Attorney in Fact for Santa Fe Pacific R.R. <u>v.</u> Udall <u>et al.</u> -----LXXXVIII	Longhat, Edward, Clara & Alice <u>v.</u> Andrus-----CI
Laden, George C., Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, Heirs of George H. Wedekind, Deceased <u>v.</u> Morton <u>et al.</u> -----CI	Lord, Blaine J., <u>et al.</u> <u>v.</u> Helmandollar <u>et al.</u> -----CIV
LaFortuna Uranium Mines, Inc. <u>v.</u> Seaton-----CV	Lost Polack Mining & Exploration Co. <u>v.</u> Andrus-----CVIII
Lamp, Benson J. <u>v.</u> Andrus <u>et al.</u> -----LXXXII	Lowey, Frederick W., <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----LXXXIX
Lance, Richard Dean <u>v.</u> Udall <u>et al.</u> -----CVIII	Lucas, Leland Murray <u>v.</u> Udall <u>et al.</u> -----LXXXIX
Lane Minerals, Inc. <u>v.</u> Udall <u>et al.</u> -----CVIII	Lujan, Frank <u>v.</u> Dept. of the Interior-----LXXXIX
Larsen, Ethel Schell & Minerals Trust Corp. <u>v.</u> Morton-----CVIII	Lutey, Bess May, <u>et al.</u> <u>v.</u> Dept. of Agriculture, BLM, <u>et al.</u> -----LXXXIX
Larsen, George M., <u>et al.</u> <u>v.</u> Udall-----LXXXVIII	Lutzenhiser, Earl M. & Leo J. Kottas <u>v.</u> Udall <u>et al.</u> -----LXXXVIII
	MacIsaac, Joseph F., <u>et al.</u> <u>v.</u> Morton-----LXXXIX
	McBride, Norman Lewis, Assignor & George Rodda, Jr., Assignee <u>v.</u> Sec- retary of the Interior <u>et al.</u> -----XCIX

<u>Page(s)</u>	<u>Page(s)</u>
McCall, William A. <u>v. Morton et al.</u> -----CVIII	Matchett, Roy L. <u>v. U.S.</u> -----XC
McCall, William A., Sr., The Dredge Corp. & Olaf H. Nelson <u>v. Boyles, John F., et al.</u> -----CIX	Mathis, Billy, <u>et al. v. Udall et al.</u> -----XC
McCall, William A., Sr. & the Estate of Olaf Henry Nelson, Deceased <u>v. Boyles, John S., District Manager, Bureau of Land Management, et al.</u> -----CIX	Matin, Helen Pratt, <u>et al. v. Johnson, Supt., Osage Ind. Agency & Udall</u> -----LXXV
McCarthy, Robert E., Successor to Walter E. Beck <u>v. Noren, Leonard E., et al.</u> -----XCIV	Matthews, George C. <u>v. Executive Dir., BLM</u> -----XC
McClarty, Kenneth <u>v. Udall et al.</u> -----CIX	May, Alvin M. <u>v. Udall et al.</u> -----CIX
McDade, James W. <u>v. Morton</u> -----LXXXIX	May, Ralph E. <u>v. Udall</u> -----XCI
McDonald, Maude E. & Harriet S. Walsh <u>v. Andrus et al.</u> -----CIII	Mecham, Allan E., <u>et al. v. Udall et al.</u> -----XCI
McDonald, Richard E., <u>et al. v. Watt et al.</u> -----XC	Meeks, Albert <u>v. Rowland</u> -----CI
McGahan, Kenneth <u>v. Udall</u> -----LXXXIX	Megna, Salvatore, Guardian, etc. <u>v. Seaton</u> -----XCI
McGarry, Sheridan L. <u>v. Udall</u> -----XC	Melcher, John & Ruth E. <u>v. Zaidlicz, Edwin, Montana Dir. of BLM et al.</u> -----LXXXVIII
McHenry, Edward T. & Ruth E. <u>v. Andrus et al.</u> -----CIX	Melluzzo, Frank & Wanita <u>v. Andrus</u> -----CIX
McIntosh, Samuel W. <u>v. Udall</u> -----XCII	Melluzzo, Frank & Wanita <u>v. Morton</u> -----CIX
McIntyre, Carmel J. <u>v. Andrus et al.</u> -----XC	Mendenhall, Robert L. <u>v. U.S., Andrus, et al.</u> -----CXII
McKenna, Elgin A. (Mrs.), as Executrix of the Estate of Patrick A. McKenna, Deceased <u>v. Udall</u> -----XC	Mesa Petroleum Co. <u>v. Andrus et al.</u> -----XCI
McKenna, Elgin A. (Mrs.), Widow and Successor in Interest of Patrick A. McKenna, Deceased <u>v. Hickel et al.</u> -----XC	Meva Corp. <u>v. U.S.</u> -----XCI
McKenna, Patrick A. <u>v. Davis</u> -----LXXX	Mickunas, Albert P. <u>v. Morton et al.</u> -----XCI
McKinnon, A. G. <u>v. U.S.</u> -----XC	Miller, Donald E. <u>v. Hickel et al.</u> -----XCI
McLean, Kenneth Samuel <u>v. Hickel</u> -----XC	Miller, Duncan <u>v. Adjudicative Officers of Billings BLM (Civil No. 74-53-BLG)</u> -----XCIII
McMaster, Raymond C. <u>v. U.S., Dept. of the Interior, Secretary of the Interior & BIA</u> -----XC	Miller, Duncan <u>v. Adjudicative Officers of Billings BLM (Civil No. 1146)</u> -----XCIII
McNeil, Wade <u>v. Leonard et al.</u> -----XC	Miller, Duncan <u>v. Adjudicative Officers of the BLM, Dept. of the Interior</u> -----XCIII
McNeil, Wade <u>v. Seaton</u> -----XC	Miller, Duncan <u>v. Adjudicative Officers of U.S. Geological Survey, Tulsa et al.</u> -----XCIII
McNeil, Wade <u>v. Udall</u> -----XC	Miller, Duncan <u>v. Admin. Officers of BLM & Dept. of Interior</u> -----XCIII
McTiernan, J. W. <u>v. Franklin, Acting Secretary of the Interior</u> -----XC	Miller, Duncan <u>v. Admin. Officers, California BLM</u> -----XCIII
McTiernan, J. W. <u>v. Morton</u> -----XC	Miller, Duncan <u>v. BLM, Dept. of the Interior, Secretary of the Interior</u> -----XCIII
Maher, Charles & L. Franklin Mader <u>v. Morton</u> -----CIX	Miller, Duncan <u>v. The Board of Land Appeals, Dept. of the Interior</u> -----XCIII
Maisano, Joseph & Jean <u>v. Morton et al.</u> -----XCIX	Miller, Duncan <u>v. Director of BLM</u> -----XCII
Marathon Oil Co. <u>v. Morton et al.</u> -----LXXIV, XC	Miller, Duncan <u>v. Officers of BLM & Dept. of the Interior</u> -----XCII

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Miller, Duncan <u>v.</u> Officers of the Dept. of the Interior (Civil No. 76-48 BLG)-----XCIII	Miller, Duncan <u>v.</u> Udall (A-30270)-----XCII
Miller, Duncan <u>v.</u> Operating Officers of BLM, Dept. of the Interior & Secretary of the Interior (Nominal Defendant)-----XCIII	Miller, Duncan <u>v.</u> Udall (A-30393)-----XCII
Miller, Duncan <u>v.</u> Seaton (A-27620)-----XCI	Miller, Duncan <u>v.</u> Udall (A-30434)-----XCII
Miller, Duncan <u>v.</u> Secretary of the Interior (A-30924 <u>et al.</u>)-----XCII	Miller, Duncan <u>v.</u> Udall (A-30517)-----XCII
Miller, Duncan <u>v.</u> Secretary of the Interior & His Officers (A-30628) <u>et al.</u> -----XCII	Miller, Duncan <u>v.</u> Udall (A-30546, A-30566 & 73 I.D. 211)-----XCII
Miller, Duncan <u>v.</u> The Honorable Sec- retaries of the Interior, etc., <u>et al.</u> (Civil No. 75-0905)-----XCIII	Miller, Duncan <u>v.</u> Udall (A-30570)-----XCII
Miller, Duncan <u>v.</u> The Honorable Sec- retaries of the Interior, etc., <u>et al.</u> (Civil No. 75-2138)-----XCIII	Miller, Duncan <u>v.</u> Udall (A-30891)-----XCII
Miller, Duncan <u>v.</u> Udall, 69 I.D. 14 (1962)-----XCVII	Mimick, John R., <u>et al.</u> <u>v.</u> Kleppe-----XCIII
Miller, Duncan <u>v.</u> Udall, 70 I.D. 1 (1963)-----XCII	Mineral Ventures, Ltd. <u>v.</u> Secretary of the Interior-----CIX
Miller, Duncan <u>v.</u> Udall (A-28008 <u>et al.</u>)-----XCI	Minerals Trust Corp. <u>v.</u> Udall-----CVI
Miller, Duncan <u>v.</u> Udall (A-28057 <u>et al.</u>)-----XCI	Mitchell Energy Corp. <u>v.</u> Andrus-----XCIII
Miller, Duncan <u>v.</u> Udall (A-28172 <u>et al.</u>)-----XCI	Mollohan, H. D., <u>et al.</u> <u>v.</u> Gray <u>et al.</u> -----XCIII
Miller, Duncan <u>v.</u> Udall (A-28509)-----XCI	Mollring, Howard S. <u>v.</u> Keough <u>et al.</u> -----XCIII
Miller, Duncan <u>v.</u> Udall (A-28586 <u>et al.</u>)-----XCI	Monington, Donald E. <u>v.</u> Andrus <u>et al.</u> -----XCIV
Miller, Duncan <u>v.</u> Udall (A-28647)-----XCI	Morgan, Burton D., <u>et al.</u> <u>v.</u> Watt <u>et al.</u> -----CXV
Miller, Duncan <u>v.</u> Udall (A-28909 <u>et al.</u>)-----LXXXIX	Morgan, Henry S. <u>v.</u> Udall-----XCIV
Miller, Duncan <u>v.</u> Udall (A-28937 <u>et al.</u>)-----XCII	Morris, G. Patrick, Joan E. Roth, Elise L. Neeley, <u>et al.</u> <u>v.</u> U.S. & Morton-----CIX
Miller, Duncan <u>v.</u> Udall (A-29251)-----XCVIII	Morrison-Knudsen Co. <u>v.</u> U.S.-----XCIV
Miller, Duncan <u>v.</u> Udall (A-29312)-----XCI	Moseley, Ernest E. <u>v.</u> Udall-----CIX
Miller, Duncan <u>v.</u> Udall (A-29365 <u>et al.</u>)-----XCII	Moss, Mildred A., <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----XCIV
Miller, Duncan <u>v.</u> Udall (A-29900 <u>et al.</u>)-----XCII	Mounce, Milton L. <u>v.</u> Andrus <u>et al.</u> -----LXXXVII
Miller, Duncan <u>v.</u> Udall (A-30122 <u>et al.</u>)-----XCII	Mountain States Resources <u>v.</u> Morton-----CXV
Miller, Duncan <u>v.</u> Udall (A-30213 <u>et al.</u>)-----XCII	Moves Camp, James, <u>et al.</u> <u>v.</u> Andrus-----XCIV
	Mulkern, G. C. (Tom) <u>v.</u> Keough-----CIX
	Mullins, Howard <u>v.</u> Andrus-----XCVII
	Multiple Use, Inc. <u>v.</u> Morton-----CXI
	Munsey, Glenn <u>v.</u> Andrus-----XCIV
	Munsey, Glenn, Arnold & Earnest Scott, Miners <u>v.</u> Morton <u>et al.</u> -----XCIV
	Murer, Christian F. <u>v.</u> Morton-----CIX
	Napier, Barnette T., <u>et al.</u> <u>v.</u> Sec.-----CIV
	National Motor Service Co., Successor to Gary K. Lloyd <u>v.</u> Morton-----CIX

<u>Page(s)</u>	<u>Page(s)</u>
Native Village of Tyonek <u>v.</u> Bennett-----XCV	Oyate, Inc., <u>et al.</u> <u>v.</u> Morton-----XCV
Navajo Tribe of Indians <u>v.</u> Morton <u>et al.</u> -----XCIV	Pacific Oil Co., a Corp. <u>v.</u> Udall-----LXXXVIII
Nelson, Leonard F. <u>v.</u> Morton <u>et al.</u> -----CX	Pacific Power & Light Co. <u>v.</u> Andrus-----XCV
Neuhoff, Edward D. & E. L. Cord <u>v.</u> Morton-----LXXX	Pagedas, Elizabeth, <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----XCVI
Nevitt, Richard L. <u>v.</u> Andrus <u>et al.</u> -----XCIV	Paine, Eugene C., <u>et al.</u> <u>v.</u> Udall-----XCVI
New England Fish Co. <u>v.</u> Sorenson <u>et al.</u> -----XCIV	Palisades Contractors <u>et al.</u> <u>v.</u> U.S.-----LXXXVI
New Jersey Zinc Corp., The, a Del. Corp. <u>v.</u> Udall-----CX	Pallin, Irene Mitchell <u>v.</u> U.S. & Edward Elmer Mitchell, Jr.-----XCVI
New York State Natural Gas Corp. <u>v.</u> Udall-----LXXVI	Pan American Petroleum Corp. <u>v.</u> Udall-----XCVI
Nickol, W. G. & Eva Rose <u>v.</u> U.S. & Morton-----CX	Pan American Petroleum Corp. & Gonsales, Charles B. <u>v.</u> Udall-----LXXXIV
Nicholas, Jess H., Jr. <u>v.</u> Udall-----XCIV	Parker, Doris Ann Whitetail, <u>et al.</u> <u>v.</u> Pappan <u>et al.</u> -----CXIV
Nielson, Jay <u>v.</u> Keough <u>et al.</u> -----CXIII	Parks, Jack, W. <u>v.</u> Kleppe-----XCVI
Nininger, Robert D. <u>v.</u> Morton & Kenneth J. Sire-----XCIV	Pashayan, Charles S., Lillie A., Charles S., Jr., & Suzanne Lillie, Co-partners, d/b/a Monturah Co. <u>v.</u> Morton-----XCVI
Noren, Leonard E. <u>v.</u> Beck-----XCIV	Paul Jarvis, Inc. <u>v.</u> U.S.-----XCVI
North Star Aviation Corp. <u>v.</u> U.S.-----XCV	Peabody Coal Co. <u>v.</u> Andrus <u>et al.</u> -----XCVI
Northwest Citizens for Wilderness Mining Co. <u>v.</u> Bureau of Land Man- agement <u>et al.</u> -----XCV	Pease, Louise A. (Mrs.) <u>v.</u> Udall-----XCV
O'Callaghan, Lloyd, Sr., Individually & as Executor of the Estate of Ross O'Callaghan <u>v.</u> Morton <u>et al.</u> -----CX	Pemberton, Mary C. <u>v.</u> Andrus-----XCVI
Oelschlaeger, Richard L. <u>v.</u> Udall-----XCV	Perry & Wallis, Inc. <u>v.</u> U.S.-----XCVI
O'Grady, Thomas James, <u>et al.</u> <u>v.</u> Andrus <u>et al.</u> -----XCV	Peter Kiewit Sons' Co. <u>v.</u> U.S.-----XCVI
Oil Resources, Inc. <u>v.</u> Andrus-----XCV	Peters, Curtis D. <u>v.</u> U.S. & Morton-----XCVI
Oil Shale Corp., The, <u>et al.</u> <u>v.</u> Sec.-----CIV	Peterson, Kent E. <u>v.</u> Andrus <u>et al.</u> -----XCVI
Oil Shale Corp., The, <u>et al.</u> <u>v.</u> Udall-----CIV	Peterson, Virgil V. <u>v.</u> The Dept. of the Interior & Andrus -----XCVI
Old Ben Coal Corp. <u>v.</u> Interior Board of Mine Operations Appeals <u>et al.</u> -----XCV	Petroleum Ownership Map Co. <u>v.</u> U.S.-----XCVI
Oldaker, Wilma <u>v.</u> Udall-----CX	Phillips, Cecil H., <u>et al.</u> <u>v.</u> Udall-----CXIV
Ondola, George & Susie, Charlie John, <u>et al.</u> <u>v.</u> Hathaway <u>et al.</u> -----LXXIV	Pittsburgh Pacific Co. <u>v.</u> U.S., Andrus, <u>et al.</u> -----CX
O'Neill, Joseph I., Jr. <u>v.</u> Udall-----XCV	Pocahontas Fuel Co. <u>v.</u> Andrus-----XCVII
Osborne, J. R. <u>v.</u> Hammitt-----CV	Pomeroy, John M. <u>v.</u> Beck-----XCVII
Osborne, J. R., Individually & on behalf of R. R. Borders, <u>et al.</u> <u>v.</u> Morton <u>et al.</u> -----CX	Poncia, Paul C., Opal L., John C. & Dorothy <u>v.</u> Morton-----CX
Ounalashka Corp., for & on behalf of its Shareholders <u>v.</u> Kleppe <u>et al.</u> -----XCV	Port Blakely Mill Co. <u>v.</u> U.S.-----XCVII
	Power, L. O., Ellis J. & Lois Dover & Noble Ribelin <u>v.</u> U.S. & Kent Frizzell, Acting Secretary-----XCVII
	Pressentin, E. V. <u>v.</u> Seaton-----CX
	Pressentin, E. V., <u>et al.</u> <u>v.</u> Seaton-----CX

Table of Suits for Judicial Review

<u>Page(s)</u>	<u>Page(s)</u>
Pressentin, E. V., Fred J. Martin, Administrator of H. A. Martin Estate <u>v. Udall</u> & Stoddard-----CX	Richardson, John L. <u>v. Udall</u> -----C
Price, Amanda <u>v. Udall</u> -----CII	Richfield Oil Corp. <u>v. Seaton</u> -----XCVIII
Price, Robert <u>v. Morton et al.</u> -----LXXX	Ridge, W. L. <u>v. U.S.</u> -----CXV
Property Management Co. <u>v. Udall</u> -----LXXXIX, XCVII	Riley Hall Coal Co <u>v. Andrus</u> -----XCVIII
Pruess, C. F., Sr. <u>v. Udall</u> -----CX	Ringstad, Mark B., <u>et al. v. U.S.</u> , Secretary of the Interior & The Arctic Slope Regional Corp.-----LXXVII
Ptasynski, Nola Grace <u>v. Hathaway et al.</u> -----XCVII	Ritter, Willis W. <u>v. Morton et al.</u> -----LXXXIII
Puckett, Robert E. <u>v. Udall</u> -----XCVII	River Queen Corp., an Arizona Corp., d/b/a River Queen Resort <u>v. Kleppe</u> , Thomas S., Individually & as Sec- retary of the Interior, <u>et al.</u> -----LXXXVIII
Pulliam, William D., <u>et al. v. Sec.</u> -----CX	Robedeaux, Oneta Lamb, <u>et al. v. Morton</u> -----XCVIII
Ram Petroleum, Inc. <u>v. Andrus et al.</u> -----XCVII	Roberts Brothers Coal Co. <u>v. Andrus, et al.</u> -----XCVIII
Ramirez, Teresa, Executor of Estate of Lola Ramirez <u>v. Secretary of the Interior</u> -----LXXXVI	Roberts, Kenneth, <u>et al. v. Morton</u> <u>et al.</u> -----CXIII
Ramoco, Inc. & Ram Petroleum, Inc. <u>v. Andrus et al.</u> -----XCVII	Robertson, Evelyn R. <u>v. Udall</u> -----XCVIII
Ramsey, Chester Lee <u>v. Andrus et al.</u> -----CXI	Robinette, Amos D. <u>v. Morton et al.</u> -----CXI
Ramsey, Marvin C. & Vesta Ruth <u>v. Sec. of the Interior</u> -----CXI	Robinson, Rene, by & through her Guardian Ad Litem, Nancy Clifford <u>v. Andrus, Cecil, Gretchen Robinson</u> & Trixi Lynn Robinson Harris-----XCIX
Ramsher Mining & Engineering Co. <u>v.</u> Secretary of the Interior & BLM-----CXI	Rocky Mountain Oil & Gas Ass'n <u>v. Andrus et al.</u> -----LXXXVI
Rawls, Edith, Individually & as Administratrix of the Estate of M. D. Rawls, Deceased, & Emma Mae Cox, a widow <u>v. U.S., Morton, et al.</u> -----LXXIV	Rodgers, R. E. & Barbara <u>v. Andrus</u> -----CXI
Ray D. Bolander Co. <u>v. U.S.</u> -----XCVII	Rogers, M. E. <u>v. U.S., Andrus, et al.</u> -----XCIX
Reed, Cecil R. <u>v. Udall et al.</u> -----CXI	Rosebud Coal Sales Co. <u>v. Andrus et al.</u> -----LXXVII, XCIX
Reed, George, Sr. <u>v. Morton et al.</u> -----XCVIII	Ross, James M., <u>et al. v. Andrus et al.</u> -----LXXXIX
Reed, Wallace, <u>et al. v. Dept. of the</u> Interior <u>et al.</u> -----LXXXVI	Rowe, Richard W. & Daniel Gaudiane <u>v. Hathaway</u> -----XCIX
Reeves, Alvin B., <u>et al. v. Morton &</u> The City of Phoenix-----XCVII	Roybal, Frank, Jr. <u>v. Andrus</u> -----XCIX
Reeves, Henry E. <u>v. Morton et al.</u> -----XCVIII	Rukke, Robert A., <u>et al. v. U.S.</u> -----CXI
Reichhold Energy Corp. <u>v. Andrus</u> -----XCVIII	Rundle, Edgar <u>v. Udall</u> -----XCIX
Reliable Coal Corp. <u>v. Morton et al.</u> -----XCVIII	Runnells, John S. <u>v. Andrus et al.</u> -----XCV
Relyea, George A. & Dorothy <u>v. Udall</u> -----CXI	Running Horse, Mary Hit Him <u>v. Udall</u> -----XCIX
Republic Steel Corp. <u>v. Interior</u> Board of Mine Operations Appeals-----XCVIII	Russell, Dan S. <u>v. McGuire, John R.</u> , Individually & as Chief, Forest Service, DOA, <u>et al.</u> -----CXI
Rhyneer, George S., <u>et al.</u> <u>v. Andrus et al.</u> -----LXXIII	Sachen, Alex, <u>et al. v. Watt et al.</u> -----XCIX
Rice, Tony, George W. Zarak, Arlene Zarak, William J. Zarak, Jr., & Darlene Zarak <u>v. Morton et al.</u> -----CXV	Safarik, Louise <u>v. Udall</u> -----LXXXII, XCIX
Richards, Theodore A. & Judith Miller <u>v. Secretary of the</u> Interior & Seldovia Native Ass'n, Inc.-----LXXIII	Safve, Rune E. S. <u>v. Sec. et al.</u> -----XCIX
	Sainberg, Robert B., Rose Mary Druse, Frank Patrick Vallely, Jr., & William J. Vallely <u>v. Morton</u> -----CXI

<u>Page(s)</u>	<u>Page(s)</u>
Sam, Christine & Nancy Judge <u>v.</u> Kleppe-----LXXXVII	Sinclair Oil & Gas Co. <u>v. Udall et al.</u> -----CI
Sam, Robert <u>v. U.S. et al.</u> -----LXXXVII	Sink, Charles T. <u>v. Kleppe & MESA</u> -----CI
Samuel, Louis <u>v. Morton</u> -----XCIX	Skelly Oil Co. <u>v. Morton et al.</u> -----CI
Sandoval, B. F., Jr. <u>v. Udall</u> -----XCIX	Smith, Eldon L. <u>v. Hickel</u> -----CI
Santa Fe Sand & Gravel Co. <u>v.</u> Rasmussen, Boyd L., <u>et al.</u> -----XCIX	Smith, James W. <u>v. U.S., Andrus, et al.</u> -----CI
Santor, Kenneth F. <u>v. Morton et al.</u> -----C	Smith, Mardelle M. & Sherman C. <u>v. Andrus et al.</u> -----CI
Saurers, Edwin R., <u>et al. v. Udall</u> -----CXI	Smith, Reid <u>v. Udall etc.</u> -----CVI
Savage, John W. <u>v. Udall</u> -----CIV	Snow, George Val & Kathleen <u>v. Andrus et al.</u> -----CI
Schade, Lloyd <u>v. Andrus, State of Alaska</u> -----C	Snyder, Ruth, Administratrix of the Estate of C. F. Snyder, Deceased, <u>et al. v. Udall</u> -----CXI
Schmand, Casper Joseph <u>v. Udall</u> -----LXXXIX, C	Sorensen, Walter M. <u>v. Andrus et al.</u> -----CI
Schmidt, Ann D. <u>v. Udall</u> -----C	South Dakota, State of <u>v. Andrus et al.</u> -----CX
Schraier, Charles <u>v. Udall</u> -----C	Southern Pacific Co. <u>v. Hickel</u> -----CI
Schuck, Joseph M. <u>v. Helmandollar</u> -----C	Southern Pacific Co. <u>et al.</u> <u>v. Morton et al.</u> -----CXI
Schuck, Joseph M. <u>v. Sec.</u> -----C	Southport Land & Commercial Co. <u>v. Udall et al.</u> -----CI
Schulein, Robert <u>v. Udall</u> -----LXXXV	Southwest Welding <u>v. U.S.</u> -----CII
Scott, Clara Ramsey <u>v. U.S. et al.</u> -----XCVII	Southwestern Petroleum Corp. <u>v. Udall</u> -----LXXXIV, CII
Seal & Co., Inc. <u>v. U.S.</u> -----C	Standard Oil Co. of Calif. <u>v. Hickel et al.</u> -----CII
Seeley, Charles L., <u>et al. v. Sec.</u> -----CXI	Standard Oil Co. of Calif. <u>v. Morton et al.</u> -----CII
Sessions, Inc. <u>v. Morton et al.</u> -----C	Stanek, George, <u>et al. v. U.S.</u> -----XCVII
Sette, James S. <u>v. Secretary</u> of the Interior-----CXI	Starks, John Walter <u>v. Watt</u> -----CII
Sexton, John J. <u>v. U.S.,</u> Morton, <u>et al.</u> -----C	Steele, J. A., <u>et al. v. Kleppe,</u> Thomas S., in his capacity as Sec- retary of the Interior & the U.S.-----LXXV
Shaw, John W. <u>v. Udall</u> -----C	Stegman, Ross <u>v. Udall</u> -----CII
Shaw, William T., Jr., <u>et al.</u> <u>v. Morton et al.</u> -----CXIII	Stevens, Clarence T. & Mary D. <u>v. Hickel</u> -----CXI
Shell Oil Co. <u>v. Udall</u> -----LXXVIII, CI	Stewart, Charles E. <u>v. Penny et al.</u> -----CXI
Shell Oil Co. & D. A. Shale, Inc. <u>v. Morton</u> -----CXII	Stewart, Joe <u>v. Andrus</u> -----CII
Shell Oil Co. <u>et al.</u> <u>v. Udall et al.</u> -----CXIV	Stewart, Nancy L., <u>et al. v. Watt et al.</u> -----CII
Sherman, Helen Edmo <u>et al.</u> <u>v. Andrus et al.</u> -----LXXVIII	Stewart Capital Corp. <u>et al. v. Andrus</u> -----LXXX
Shern, Michael <u>v. Kleppe et al.</u> -----CI	Stewart Capital Corp. <u>et al.</u> <u>v. Martinez, Raul, Chief,</u> Minerals Sec., New Mexico State Office, BLM-----XCVI
Shoup, Leo E. <u>v. Udall</u> -----CVI	
Shuck, Thomas R. <u>v. Helmandollar</u> -----CXI	
Simons, Earlene Ida Abbott <u>v. Udall et al.</u> -----CXIII	
Simplot Industries, Inc. <u>v. Udall</u> -----CXII	

Table of Suits for Judicial Review

Page(s)Page(s)

Stickelman, Elaine S. v. U.S. et al.-----CII

Still, Edwin, et al. v. U.S.-----LXXXIV

Stratman, Omar v. Dept. of the Interior, BLM-----CII

Sullivan, Cornelius D. & Josie L. v. U.S.-----CXII

Superior Oil Co. v. Bennett-----XCV

Superior Oil Co. et al., The v. Udall-----CIII

Supron Energy Corp., Southland Royalty Co. & Consolidated O&G Co. v. Andrus-----CII

Swanson, Elmer H. v. Morton-----CXII

Swanson, Elmer H. & Livingston Silver, Inc. v. Andrus-----CXII

Tallman, James K., et al. v. Udall-----CII

(Tate), Viola Atewooftakewa, et al. v. Udall-----LXXVIII

Taunah, Bert, et al. v. Udall-----XCVIII

Tempest Mining Corp. v. U.S., Dept. of Interior, Bureau of Land Management & Secretary of the Interior-----CXII

Texaco, Inc., a Corp. v. Secretary of the Interior-----CII

Texas Construction Co. v. U.S.-----CII

Thom Properties Inc. d/b/a Toke Cleaners & Launderers v. U.S., Dept. of Interior, BIA-----CIII

Thomas, Albert & Ellora v. Morton et al.-----CIII

Thor-Westcliffe Development, Inc. v. Udall-----CIII

Thor-Westcliffe Development, Inc. v. Udall et al.-----CIII

Tooisgah, Jonathan Morris & Velma v. Kleppe-----CIII

Tree Land Nursery, Inc. v. U.S.-----CIII

Turner, William M. v. Watt-----CIII

Tyee Construction Co. v. U.S.-----CIII

Umpleby, Joseph B., et al. v. Udall-----CIV, CXIII

Underwood, C. Fred, Chloe Underwood & Jack D. Canon v. The Secretary of the Interior-----CXII

Union Oil Co. of Calif. v. Andrus-----CIII

Union Oil Co. of Calif. v. Udall-----CIII, CIV

Union Oil Co. of Calif., a Corp. v. Udall-----CIV

United Mine Workers of America v. Andrus (No. 77-1090)-----LXXXI

United Mine Workers of America v. Andrus (No. 77-1839)-----LXXIV

United Mine Workers of America v. Andrus (No. 77-1840)-----XCV

United Mine Workers of America (Local Union No. 1993) v. Andrus-----CIV

United Mine Workers of America v. Interior Board of Mine Operations Appeals-----LXXXI

United Mine Workers of America v. Kleppe (No. 76-1208)-----LXXVIII

United Mine Workers of America v. Kleppe (No. 76-1377)-----CIV

United Mine Workers of America v. Kleppe (No. 76-1980)-----LXXX

United Mine Workers of America (Dist. 6) et al. v. U.S. Dept. of Interior Board of Mine Operations Appeals-----LXXXV

United Mine Workers of America v. U.S. Interior Board of Mine Operations Appeals (75-1852)-----XCV

U.S. v. Adams, Alonzo A.-----CIV

U.S. v. Bryant, Raymond E.-----CVI

U.S. v. Brubaker-Mann, Inc. et al.-----CV

U.S. v. Buell, Carl M. & Lloyd F. d/b/a Buell Brothers-----LXXVI

U.S. v. Coleman, Alfred-----CVI

U.S. v. Harco Engineering, a Division of Harbor Boat Building Co.-----LXXVIII

U.S. v. Haskins, Richard P.-----CVII

U.S. v. Hood Corp. et al.-----LXXXVI

U.S. v. House, Charles, Eleanor Lee Burnham, as Sole Heir & Devisee of Geneva Tullis Skinner, Deceased, et al.-----LXXXV

U.S. v. Michener, Raymond T., et al.-----LXXXVI

U.S. v. Nevitt, Melvin L.-----CX

U.S. v. Nogueira, Edison R., et al.-----CIX

U.S. v. Webb, Hiram-----CXII

U.S. v. Willcoxson et al.-----CXIV

U.S. & Rogers C. B. Morton v. Wharton, Minnie E., et al.-----CXIV

Unruh, Paul E. v. Udall et al.-----CXIII

Utah International v. Andrus-----CXII

Utah Power & Light Co. v. Kleppe-----CXIII

<u>Page(s)</u>	<u>Page(s)</u>
Utah Power & Light Co. <u>v. Morton et al.</u> -----CXIII	Willcoxson, Buck <u>v. Udall</u> -----CXIV
Vaden, Henrietta Roberts, a/k/a Henrietta R. Vaden <u>v. Kleppe et al.</u> -----CXIII	Willcoxson, Buck <u>v. U.S.</u> -----CXIV
Vaile, Eunice Lucero <u>v. Morton et al.</u> -----LXXXIX	William A. Smith Contracting Co. <u>v. U.S.</u> -----CXIV
Vaile, Eunice Lucero <u>v. Udall</u> -----LXXXIX	William A. Smith Contracting Co., Inc., <u>et al. v. U.S.</u> -----CXIV
Vaughey, E. A. <u>v. Seaton</u> -----CXIII	William F. Klingensmith, Inc. <u>v. U.S.</u> -----CXIV
Verrue, Alfred N. <u>v. U.S. et al.</u> -----CXII	Wilson Farms Coal Co. <u>v. Andrus</u> -----CXIV
Virginia Iron, Coal & Coke Co. <u>v. Andrus</u> -----CXIII	Wilson, Harry H. <u>v. U.S. & Andrus</u> -----CXIV
Vitek, Richard K., <u>et al.</u> <u>v. Andrus et al.</u> -----LXXXIX	Winkler, Joseph A. <u>v. Kleppe</u> -----CXV
Wackerli, Burt & Lueva G., <u>et al.</u> <u>v. Udall et al.</u> -----CXIII	Wisenak, Inc., an Alaska Corp. <u>v. Kleppe, Thomas S., Secretary</u> <u>of the Interior & U.S.</u> -----CXV
Wagner, Richard, <u>et al. v. U.S. et al.</u> -----LXXVIII	Witt, Moss J. <u>v. U.S. et al.</u> -----CI
Wahwersee, Mattie <u>v. Kleppe</u> -----CXIV	WJM Mining & Development Co. <u>et al.</u> <u>v. Morton</u> -----CIX
Walker, Jack A. <u>v. U.S. & Udall</u> -----CXIII	Wood, Rodney, <u>et al. v. Udall et al.</u> -----CXII
Wallis, Floyd A. <u>v. Udall</u> -----LXXXVI	Wooding, Robert B., d/b/a Associated Investors & Auburn Enterprises, Inc. <u>v. Kleppe et al.</u> -----CXV
Ward, Alfred, Irene Ward Wise & Elizabeth Collins <u>v. Frizzell,</u> Kent, Acting Secretary, <u>et al.</u> -----CXIII	Wright, Hoover H. <u>v. Seaton</u> -----XCVI
Wasserman, Jacob N. <u>v. Udall</u> -----XCIV	Wyoming, State of, Albert E. King, Comm'r. of Public Lands <u>v. Andrus</u> -----CXV
Weardco Construction Corp. <u>v. U.S.</u> -----CXIII	Wyoming, State of, & Gulf Oil Corp. <u>v. Udall, etc.</u> -----CIV
Webb, Hiram <u>v. U.S.</u> -----CXII	Yavapai-Prescott Indian Tribe <u>v. Andrus et al.</u> -----LXXXVIII
Weiss, Oscar W. <u>v. Udall</u> -----CXII	Young Associates, Inc. <u>v. U.S.</u> -----CXV
Wells, Thomas C. <u>v. Udall</u> -----CXII	Zapata Coal Corp. <u>v. Andrus</u> -----CXV
Wells, W. C. <u>v. Udall</u> -----XCVIII	Zeigler Coal Co. <u>v. Frizzell, Kent,</u> Acting Secretary-----CXV
Western Nuclear, Inc. <u>v. Andrus, Cecil & U.S.</u> -----CXIV	Zimmers, Jon F. <u>v. Andrus</u> -----CXII
Western Slope Carbon, Inc. <u>v. Andrus</u> -----LXXVII	Zuckerman, Harry & Mark M. Collins <u>v. Civiletti, Benjamin, Attorney</u> General, <u>et al.</u> -----CXVI
Wheeler, Richard, Jr. <u>v. Dept. of</u> Interior & Cecil Andrus-----CXIV	Zwang, Darrell & Elodymae <u>v. Andrus</u> -----CXIII
White, Vernon O. & Ina C. <u>v. Udall</u> -----CXII	Zwang, Darrell, <u>et al. v. Udall</u> -----CXVI
Wichner, Milton <u>v. Andrus et al.</u> -----CXII	Zweifel, Merle I., <u>et al. v. U.S.</u> -----CXIII
Wilderness Society, The, McKenzie Flyfishers, <u>et al. v. Andrus</u> -----CXII	
Willcoxson, Buck <u>v. Henriques</u> -----CXIV	

CUMULATIVE INDEX TO SUITS FOR JUDICIAL REVIEW OF DEPARTMENTAL DECISIONS

BOTH PUBLISHED AND UNPUBLISHED

The index below is in alphabetical order according to the name of the first party identified in a decision or opinion of the Department. Beginning with January of 1955, all judicial review of departmental decisions and opinions sought by any party are included. The name of the action is listed as it appears on the court docket in each court. Where the decision of the court has been published, the citation is given; if not, the docket number and date of final action taken by the court is set out. If the court issued an opinion in a nonreported case, the fact is indicated; otherwise no opinion was written. Unless otherwise indicated, all suits were commenced in the United States District Court for the District of Columbia and, if appealed, were appealed to the United States Court of Appeals for the District of Columbia Circuit. Finally, if judicial review resulted in a further departmental decision, the departmental decision is cited.

Bill Adams, Horace Chapman, Earl Chapman, IBLA
79-236, Order dated Mar. 10, 1979, dismissing
appeal for lack of jurisdiction

Bill Adams, Horace Chapman & Earl Chapman
v. Cecil D. Andrus, Secretary of the
Interior, Civil No. C-79-0220, D. Utah.
Remanded, Sept. 29, 1980; amended order
Nov. 2, 1980; appeal filed.

Adler Construction Co., 67 I.D. 21 (1960)
(Reconsideration)

Adler Construction Co. v. U.S. Cong. 10-60.
Dismissed, 423 F.2d 1362 (1970); rehearing
denied, July 15, 1970; cert. denied, 400 U.S.
993 (1970); rehearing denied, 401 U.S. 949 (1971).

Adler Construction Co. v. U.S., Cong. 5-70.
Trial Commissioner's report accepting and
approving the stipulated agreement filed
Sept. 11, 1972.

Estate of John J. Akers, 1 IBIA 8; 77 I.D. 268
(1970)

Dolly Cusker Akers v. The Dept. of the
Interior, Civil No. 907, D. Mont. Judgment
for defendant, Sept. 17, 1971; order staying
execution of judgment for 30 days issued
Oct. 15, 1971; appeal dismissed for lack of
prosecution, May 3, 1972; appeal reinstated,
June 29, 1972; aff'd, 499 F.2d 44 (9th Cir.
1974).

State of Alaska, Andrew Kalerak, Jr., 73 I.D. 1 (1966)

Andrew J. Kalerak, Jr., et al. v. Stewart L.
Udall, Civil No. A-35-66, D. Alaska. Judgment
for plaintiff, Oct. 20, 1966; rev'd., 396 F.2d
746 (9th Cir. 1968); cert. denied, 393 U.S.
1118 (1969).

Appeal of the State of Alaska, 3 ANCAB 285 (1979),
Order dismissing appeal & decision dated June 11,
1979

State of Alaska v. Cecil D. Andrus,
Secretary of the Interior, Guy R.
Martin, Assistant Secretary of the
Interior, BLM, & Koniag, Inc., Civil
No. A79-168-CIV, D. Alaska. Suit
pending.

Appeals of the State of Alaska & Seldovia Native
Ass'n, Inc., 2 ANCAB 1, 84 I.D. 349 (1977)

Theodore A. Richards & Judith Miller v. The

Secretary of the Interior & Seldovia Native
Ass'n, Inc., Civil No. A78-170-CIV, D.
Alaska. Suit pending.

George S. Rhyneer, Walter M. Johnson, David
Vanderbrink, Vivian MacInnes, Bruce McAllister
& Alan V. Hanson v. Cecil Andrus, Secretary of
the Interior, Seldovia Native Ass'n, Inc.,
Cook Inlet Region, Inc., Robert Leresche,
Comm'r. of Natural Resources of the State of
Alaska, Civil No. A78-240 CIV, D. Alaska.
Suit pending.

William T. Alexander, 21 IBLA 56 (1975). Petition
for Reconsideration denied by Order, Jan. 5,
1976, 28 IBLA 277 (1976) (Supp. I) 41 IBLA 1
(1979)

William T. Alexander v. Kent Frizzell, Acting
Secretary of the Interior et al., Civil No.
CIV 75-538, D.N.M. Remanded, Apr. 23, 1976.

William T. Alexander v. Cecil Andrus, Secre-
tary of the Interior, et al., Civil No.
CIV-79-603-B, D.N.M. Judgment for defendant,
July 3, 1980.

E. H. Allen & Frank Melluzzo, A-30182 (July 9, 1964)

E. H. Allen & Frank Melluzzo v. Stewart L.
Udall, Civil No. 1001 D. Ariz. Judgment for
defendant, Apr. 27, 1967; no appeal.

William Allen, 17 IBLA 1 (1974)

William Allen v. Rogers C. B. Morton, Secre-
tary of the Interior, Civil No. C-74-331,
D. Utah. Rev'd & remanded, Apr. 20, 1976; no
appeal.

Allied Contractors, Inc., 68 I.D. 145 (1961)

Allied Contractors, Inc. v. U.S., Ct. Cl.
No. 163-63. Stipulation of settlement filed
Mar. 3, 1967; compromised.

American Coal Co., 84 I.D. 394 (1977)

American Coal Co. v. Department of the
Interior, No. 77-1604, United States Ct. of
Appeals, 10th Cir. Dismissed on motion of
Petitioner, Nov. 23, 1977.

American Quasar Petroleum Co., 42 IBLA 243 (1979)

Arjay Oil Co. v. Cecil Andrus, Secretary of the
Interior, Curt Berklund, Dir., BLM, Robert O.
Buffington, State Dir., BLM, Idaho Office,
Civil No. C-80-0002-W, D. Utah. Suit pending.

American Telephone & Telegraph Co., 25 IBLA 341
(1976)

American Telephone & Telegraph Co. v. Dept. of the Interior, Rogers C. B. Morton, et al., Civil No. 5695, D. Wyo. Dismissed with prejudice, Dec. 26, 1973; order amending judgment filed Feb. 15, 1974.

Arjay Oil Co., 31 IBLA 260 (1977)

Arjay Oil Co. v. Cecil D. Andrus, Individ. & in his capacity as Secretary of the Interior, George L. Turcott, Individ. & in his capacity as Acting Director, Bureau of Land Management, William C. Mathews, Individ. & in his capacity as Director of the Idaho State Office, J. W. & Carolyn Bloom & American Quasar Petroleum Co., Civil No. C-77-1167, D. Idaho. Dismissed without prejudice Jan. 19, 1978; dismissed for lack of prosecution, Dec. 22, 1978.

Armco Steel Corp., 84 I.D. 454 (1977)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1839, United States Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Charles D. Ashley, 37 IBLA 367
(1978)

Eleanor P. Ashley as Personal Representative of the Estate of Charles D. Ashley v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-C-60, D. Wis. Rev'd, Mar. 27, 1980; appeal filed May 23, 1980.

The Atchison, Topeka & Santa Fe Railway Co. v. Emma Mae Cox, U.S. v. Emma Mae Cox & M. D. & Edith Rawls, 4 IBLA 279 (1972)

Edith Rawls, individually & as Administratrix of the Estate of M. D. Rawls, Deceased, & Emma Mae Cox, a widow v. U.S., Rogers C. B. Morton, et al., Civil No. 73-19 PCT CAM, D. Ariz. Judgment for defendant, Apr. 22, 1975; reconsideration denied, Nov. 18, 1975; aff'd, 566 F.2d 1373 (9th Cir. 1978); no petition.

Virginia Gail Atchison et al., 13 IBLA 18 (1973); George Ondola, 17 IBLA 363 (1974), Petition for Reconsideration denied by Order, Mar. 17, 1975; Susie Ondola, 17 IBLA 359 (1974), Petition for Reconsideration denied by Order, Mar. 17, 1975.

George Ondola, Susie Ondola, Charlie John, and on behalf of all other Alaska Natives similarly situated v. James Hathaway et al., Civil No. A75-111, D. Alaska. Suit pending.

Atlantic Richfield Co., Marathon Oil Co., 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, Vincent E. McKelvey, Dir. of Geological Survey, & C. J. Curtis, Area O&G Supervisor, Geological Survey, Civil No. C74-181, D. Wyo.

Actions consolidated; judgment for Plaintiff, 407 F. Supp. 1301 (1975); aff'd, 556 F.2d 982 (10th Cir. 1977).

Estate of Albert Attocknie, IA-1442 (Feb. 7, 1966)

Willis Attocknie v. Stewart L. Udall, Civil No. 1646-66. Dismissed with prejudice, 261 F. Supp. 876 (1966); rev'd, 390 F.2d 686 (10th Cir. 1968); cert. denied, 393 U.S. 833 (1968).

Harold Babcock et al., A-30301 (June 16, 1965)

James Babcock et al. v. Stewart L. Udall, Civil No. 1-66-87, S.D. Idaho. Judgment for defendant, June 24, 1969; no appeal.

J. C. Babcock, J. G. Shipp, 25 IBLA 316 (1976), reconsideration denied, Aug. 12, 1976

J. C. Babcock & L. G. Shipp v. The Secretary of the Interior, Civil No. C-77-15, E.D. Wash. Judgment for defendant aff'd, Aug. 31, 1979.

Badger Coal Co., 2 IBSMA 117 (1980)

Badger Coal Co. v. Cecil D. Andrus, Civil No. 80-0333-E, N.D. W. Va. Suit pending.

Badger Coal Co., Petitioner v. Office of Surface Mining Reclamation & Enforcement, 2 IBSMA 95 (1980)

Badger Coal Co. v. Cecil D. Andrus et al., Civil No. 80-0094-C, N.D. W. Va. Suit pending.

David C. Bagley et al., A-30138 (Dec. 29, 1964)

David C. Bagley et al. v. Stewart L. Udall et al., Civil No. 109-65, D. Utah. Judgment for plaintiff, June 13, 1966; decree of dist. ct. vacated, case remanded to be dismissed as moot, Jan. 20, 1967, 10th Cir.; dismissed, Apr. 24, 1967.

Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973)
See William D. Sexton et al.

R. C. Bailey et al., 7 IBLA 266 (1972), R. C. Bailey & C. Burglin, 10 IBLA 281 (1973)
See William D. Sexton et al.

Robert V. Bailey et al., 12 IBLA 253 (1973)

Max L. Krueger v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1256. Dismissed, Jan. 28, 1975; no appeal.

Leslie N. Baker et al., A-28454 (Oct. 26, 1960).
On reconsideration Autrice C. Copeland, 69 I.D. 1 (1962).

Autrice Copeland Freeman v. Stewart L. Udall, Civil No. 1578, D. Ariz. Judgment for defendant, Sept. 3, 1963 (opinion); aff'd, 336 F.2d 706 (9th Cir. 1964); no petition.

Suits for Judicial Review

Phil Baker, 84 I.D. 877 (1977)

Phil Baker v. Department of the Interior, No. 77-1973, United States Ct. of Appeals, D.C. Cir. Aff'd in part & rev'd in part, Nov. 29, 1978.

H. E. Baldwin & John R. Keeling, 3 IBLA 71 (1971)

H. E. Baldwin & John R. Keeling v. Rogers C. B. Morton et al., Civil No. 72-438 PHX CAM, D. Ariz. Dismissed, May 29, 1974; appeal dismissed, Jan. 16, 1976.

Ball Brothers Sheep Co. et al., 2 IBLA 166 (1971)

Ball Brothers Sheep Co. v. Rogers C. B. Morton, Civil No. 1-72-35, D. Idaho. Dismissed, Oct. 12, 1973; no appeal.

Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974)

Ballard E. Spencer Trust, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 75-060, D.N.M. Judgment for defendant, Aug. 19, 1975; aff'd, 544 F.2d 1067 (10th Cir. 1976).

Estate of Myron Bangs, Jr., IA-1327 (Feb. 7, 1966)

Helen Pratt Martin et al. v. Johnson, Supt., Osage Ind. Agency & Udall, Civil No. 6444, N.D. Okla. Sustained, June 2, 1967; dismissed, June 25, 1970.

Max Barash, The Texas Co., 63 I.D. 51 (1956)

Max Barash v. Douglas McKay, Civil No. 939-56. Judgment for defendant, June 13, 1957; rev'd & remanded, 256 F.2d 714 (1958); judgment for plaintiff, Dec. 18, 1958. Supplemental decision, 66 I.D. 11 (1959); no petition.

Barnard-Curtiss Co., 64 I.D. 312 (1957)
65 I.D. 49 (1958)

Barnard-Curtiss Co. v. U.S., Ct. Cl. No. 491-59. Judgment for plaintiff, 301 F.2d 909 (1962).

R. M. Barton, 4 IBLA 229 (1972); 5 IBLA 1 (1972); 7 IBLA 68 (1972)

R. M. Barton v. Rogers C. B. Morton et al., Civil No. 9322, D.N.M.

R. M. Barton v. Rogers C. B. Morton et al., Civil No. 9415, D.N.M. Actions consolidated.

R.M. Barton v. Rogers C. C. Morton et al., Civil No. 9692, D.N.M.

Dismissed with prejudice, Dec. 20, 1972; no appeal.

Bass Enterprises Production Co., 48 IBLA 11 (1980)

Bass Enterprises Production Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. Civ 80-431 C, D.N.M. Suit pending.

Eugenia Bate, 69 I.D. 230 (1962)

Katherine S. Foster & Brook H. Duncan II v. Stewart L. Udall, Civil No. 5258, D.N.M. Judgment for defendant, Jan. 8, 1964; rev'd, 335 F.2d 828 (10th Cir. 1964); no petition.

Battle Mountain Co., A-29146 (Jan. 31, 1963)

Battle Mountain Co. v. Stewart L. Udall, Civil No. 64-29, D. Ore. Per curiam decision, 225 F. Supp. 382 (1966); rev'd, 385 F.2d 90 (9th Cir. 1967); cert. denied, 390 U.S. 957 (1968)

Bay Construction Co. et al., IBCA-77 (Nov. 30, 1960)

Bay Construction Co. et al. v. U.S., Ct. Cl. No. 302-60. Dismissed with prejudice.

Robert L. Beery et al., 25 IBLA 287, 83 I.D. 249 (1976)

J. A. Steele et al. v. Thomas S. Kleppe in his capacity as Secretary of the Interior, & U.S., Civil No. C76-1840, N.D. Cal. Aff'd, June 27, 1978; no appeal.

Robert E. Belknap et al., 55 IBLA 200 (1981)

Robert E. Belknap III & Thomas H. Belknap, as Trustees & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C81-0267, D. Wyo. Suit pending.

Geosearch, Inc. & Larry R. Glasnapp v. James G. Watt et al., Civil No. C81-0266, D. Wyo. Suit pending.

Jack J. Bender, 54 IBLA 375, 88 I.D. 550 (1981)

Jack J. Bender v. James G. Watt, Secretary of the Interior, et al., Civil No. CIV 81-0682JB, D.N.M. Suit pending.

Administrative Appeal of Benson-Montin-Greer Drilling Corp. v. Acting Area Director, Albuquerque Area Office, Bureau of Indian Affairs, 7 IBIA 67 (1978)

Benson-Montin-Greer Drilling Corp. v. Cecil Andrus, Individ. & as Secretary of the Interior, The Board of Indian Appeals & the Acting Area Director of the Bureau of Indian Affairs, Albuquerque Area Office, Civil No. CIV 78-468-B, D.N.M. Suit pending.

Estate of Julius Benter, IBIA-70-5 (Nov. 17, 1970), 1 IBIA 59 (1971)

George B. Brazie, individually & as the Executor of the Last Will & Testament of Julius Benter, Deceased v. Rogers C. B. Morton, Civil No. S-2360, E.D. Cal. Stipulated dismissal with prejudice.

Sam Bergesen, 62 I.D. 295 (1955)

Reconsideration denied, IBCA-11 (Dec. 19, 1955)

Sam Bergesen v. U.S., Civil No. 2044, D. Wash. Complaint dismissed Mar. 11, 1958; no appeal.

Estate of William Bigheart, Jr., IA-T-21 (Aug. 8, 1969), IA-T-21 (Supp.) (Sept. 4, 1969)

Velma Rose Bigheart, Surviving Spouse of William Bigheart, Jr., Deceased Unallotted Osage Indian v. John Pappan, Supt., Osage Indian Agency et al., Civil No. 69-C-303, D. Okla. Order to Stay Proceedings issued May 15, 1970; amendment to complaint filed Dec. 17, 1971; judgment for defendant, July 31, 1972; reconsideration denied, Aug. 23, 1972; aff'd, 482 F.2d 1066 (10th Cir. 1973); cert. denied, 416 U.S. 937 (1974); rehearing denied, 417 U.S. 977 (1974).

Bishop Coal Co., 82 I.D. 553 (1975)

William Bennett, Paul F. Goad & United Mine Workers v. Thomas S. Kleppe, Secretary of the Interior, No. 75-2158, United States Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Anthony Bitseedy, 5 IBIA 270 (1976)

Ruby Dawson, Guardian ad litem of Anthony Bitseedy, Jr., & Sara Mingus Bitseedy, Mother of Anthony Bitseedy, Jr. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-0237, D. Okla. Judgment for defendant, Oct. 27, 1977.

Black Fox Mining & Development Corp., 2 IBMA 110, 87 I.D. 207 (1980)

Black Fox Mining & Development Corp. v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 80-913 K, W.D. Pa. Judgment for plaintiff, Jan. 21, 1981; no appeal.

Blackwood Fuel Co., Petitioner v. Office of Surface Mining Reclamation & Enforcement, Humphreys Enterprises, Petitioner v. Office of Surface Mining Reclamation & Enforcement, Respondent, 2 IBMA 233 (1980)

Blackwood Fuel Co. et al. v. Cecil D. Andrus et al., Civil No. 80-0289-B, D. Va. Suit pending.

BLM-A-045569, 70 I.D. 231 (1963)

New York State Natural Gas Corp. v. Stewart L. Udall, Civil No. 2109-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; Per curiam decision, aff'd, Apr. 28, 1966; no petition.

Estate of Harold Russell Bobb, 5 IBIA 92 (1976)

Wilson Bobb, Sr. v. U.S. & Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-314, S.D. Wash. Suit pending.

F. W. C. Boesche, A-27997 (Aug. 5, 1959)

Fenelon Boesche v. Fred A. Seaton, Civil No. 2463-59. Judgment for defendant, Nov. 23, 1960 (opinion); aff'd, 303 F.2d 204 (1961); cert. granted, 371 U.S. 886 (1962); aff'd, 373 U.S. 472 (1963).

Irving B. Brick, 36 IBLA 235 (1978); vacated by Order Sept. 26, 1980.

Irving B. Brick v. Cecil D. Andrus, Civil No. 78-1814. Judgment for defendant, June 8, 1979; rev'd & remanded to Secretary with instructions, 628 F.2d 213 (D.C. Cir. 1980).

Brookhaven Oil Co., A-27459 (July 29, 1957)

Brookhaven Oil Co. v. Fred A. Seaton, Civil No. 2120-57. Judgment for plaintiff, Oct. 1, 1958; no appeal.

Jessie A. Brown, 23 IBLA 23 (1975), On Reconsideration, 28 IBLA 339 (1977)

Jessie A. Brown & W. L. Tallon, Jr. v. Cecil D. Andrus, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management & Ben F. Collins, Civil No. F-77-128-Civ, D. Cal. Remanded to the Department, June 29, 1979; no appeal.

Melvin A. Brown, 69 I.D. 131 (1962)

Melvin A. Brown v. Stewart L. Udall, Civil No. 3352-62. Judgment for defendant, Sept. 17, 1963; rev'd, 335 F.2d 706 (1964); no petition.

Tom Brown, 37 IBLA 381 (1978)

Tom Brown v. U.S. Department of the Interior, Civil No. 80-3046, W.D. Ark. Suit pending.

R. C. Buch, 75 I.D. 140 (1968)

R. C. Buch v. Stewart L. Udall, Civil No. 68-1358-PH, C.D. Cal. Judgment for plaintiff, 298 F. Supp. 381 (1969); rev'd, 449 F.2d 600 (9th Cir. 1971); judgment for defendant, Mar. 10, 1972.

Buell Brothers, A-30679 (Mar. 29, 1967)

U.S. v. Carl M. Buell & Lloyd F. Buell, d/b/a Buell Bros., U.S. Atty. No. N-371. Compromised, Oct. 23, 1968.

Evelyn M. Bunch, 25 IBLA 44 (1976)

Evelyn M. Bunch v. Thomas Kleppe, Secretary of the Interior, Civil No. A76-115 CIV, D. Alaska. Dismissed, Aug. 13, 1976.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272; 86 I.D. 133 (1979)

Holland Livestock Ranch, a Co-Partnership composed of Bright-Holland Co., Marimont-Holland Co. & Nemmeroff-Holland Co. and John J. Casey v. U.S., Cecil Andrus, Secretary of the Interior, Edward Roland, Cal. State Director, BLM, & Edward Haste, Nev. State Director, BLM, et al., Civil No. R-79-78-HEC, D. Nev. Suit pending.

Suits for Judicial Review

Bureau of Land Management, Appellant, Diamond Ring Ranch, Appellee & Bureau of Sport Fisheries & Wildlife, Amicus Curiae, 12 IBLA 358 (1973)

Diamond Ring Ranch, Inc. v. Rogers C. B. Morton, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management for the State of Wyoming, Civil No. 5934, D. Wyo. Judgment for plaintiff, Dec. 20, 1974.

C. Burglin et al., 21 IBLA 234 (1975)

C. Burglin, A. E. Greig, Owen Jennings, Wallace F. Burnett, Jr., Alexander Miller, Charles Stack, Dora Alice Carter, Earnest G. Carter, Howard Bowen, and Evelyn Franich v. The Secretary of the Interior, Thomas Kleppe et al., Civil No. A75-232 CIV, D. Alaska. Consolidated with C. Burglin et al. v. Thomas Kleppe, Civil No. A75-113.

Bushman Construction Co., IBCA-103 (Mar. 29, 1957)

Bushman Construction Co. v. U.S., Ct. Cl. No. 437-57. Petition dismissed, 164 F. Supp. 239 (1958).

Administrative Appeal of Norman R. Byrd v. Comm'r, Bureau of Indian Affairs, 7 IBIA 142 (1979)

Norman R. Byrd v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. C-79-229, E.D. Wash. Suit pending.

Cabax Mills, 32 IBLA 225 (1977)

BPS Associates, a Joint Venture composed of Black Investment Properties, Inc., CPC Plants Corp. & Triple S. Enterprises, Inc. v. U.S. & Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-845, D. Ore. Suit pending.

Zelph S. Calder, A-30039 (Sept. 18, 1963)

Zelph S. Calder v. Stewart L. Udall, Civil No. C-219-63, D. Utah. Judgment for defendant, Aug. 10, 1964; no appeal.

California Ass'n of Four-Wheel Drive Clubs, et al., 38 IBLA 361 (1978)

California Ass'n of 4WD Clubs, Inc., & California Off-Road Vehicle Ass'n, Inc. v. Cecil Andrus, Secretary of the Interior & James B. Ruche, State Director, Cal. State Office of BLM, Civil No. 79-1797-N, S.D. Cal. Judgment for defendant Aug. 5, 1980; appeal filed, Aug. 27, 1980.

The California Co., 66 I.D. 54 (1959)

The California Co. v. Stewart L. Udall, Civil No. 980-59. Judgment for defendant, 187 F. Supp. 445 (1960); aff'd, 296 F.2d 384 (1961).

State of California et al. v. Doria Mining and Engineering Corp. et al., U.S., Intervenor, 17 IBLA 390 (1974)

Doria Mining and Engineering Corp. v. Rogers Morton, Secretary of the Interior, et al., Civil No. CV 75-899-FW, C.D. Cal. Judgment for defendant, 420 F. Supp. 837 (1976); vacated and remanded Nov. 2, 1979.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (1979)

California Portland Cement Co. v. Cecil D. Andrus, et al., Civil No. C-79-0477, D. Utah. Reversed Dec. 30, 1980.

Western Slope Carbon, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-79-350, C.D. Utah. Suit pending.

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Marla B. Bohl, Chief, Land & Mining, BLM, Wyo. State Office, Civil No. C79-160, D. Wyo. Reversed June 9, 1980; appeal filed.

In the Matter of Cameron Parish, Louisiana, Cameron Parish Police Jury & Cameron Parish School Board, June 3, 1968, appealed by Secretary July 5, 1968, 75 I.D. 289 (1968)

Cameron Parish Police Jury v. Stewart L. Udall et al., Civil No. 14,206, W.D. La. Judgment for plaintiff, 302 F. Supp. 689 (1969); order vacating prior order issued Nov. 5, 1969.

Jack D. Canon et al., 30 IBLA 112 (1977)

Jack D. & Billie B. Canon, C. Fred & Chloe Underwood, Donald W. & Susan Canon, David A. & Ann Underwood v. Cecil D. Andrus, Secretary of the Interior, Civil No. S78-51-PCW, E.D. Cal. Suit pending.

James W. Canon et al., 84 I.D. 176 (1977)

Mark B. Ringstad, William I. Waugaman, William N. Allen III, Nils Braastad, Elmer Price, Dan Ramras, & Kenneth L. Rankin v. U.S., Secretary of the Interior, & The Arctic Slope Regional Corp., Civil No. A78-32-Civ, D. Alaska. Suit pending.

Canterbury Coal Co., 83 I.D. 325 (1976)

Canterbury Coal Co. v. Thomas S. Kleppe, No. 76-2323, United States Ct. of Appeals, 3d Cir. Aff'd per curiam, June 15, 1977.

Capital Fuels, Inc., 2 IBSMA 261, 87 I.D. 430 (1980)

Capital Fuels, Inc. v. Cecil D. Andrus, Secretary of the Interior, Walter N. Heine, Dir. Office of Surface Mining Reclamation & Enforcement, Civil No. 80-2438, S.D. W. Va. Suit pending.

Carbon Fuel Co., 83 I.D. 39 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1208, United States Ct. of Appeals, D.C. Cir. Reversed & remanded, 581 F.2d 891 (1978); cert. denied, Oct. 30, 1978.

Jack E. Carl, A-27870, A-27900 (Apr. 23, 1959)

Jack E. Carl v. Fred A. Seaton, Civil No. 3069-59. Judgment for defendant, June 20, 1961; aff'd, 309 F.2d 653 (1962).

Carson Construction Co., 62 I.D. 422 (1955)

Carson Construction Co. v. U.S., Ct. Cl. No. 487-59. Judgment for plaintiff, Dec. 14, 1961; no appeal.

Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)
See William D. Sexton et al.

John Jay Casey, IBLA 74-196, Order decided, Jan. 29, 1975

John Jay Casey v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-74-153-RDF, D. Nev. Dismissed without prejudice, Dec. 23, 1974.

C. F. Lytle Co., IBCA-172 (Sept. 30, 1958)

C. F. Lytle Co. v. U.S., Ct. Cl. No. 174-59. Compromised.

Estate of George Chahesenah, IA-T-4 (June 20, 1967)

Viola Atewooftakewa (Tate) et al. v. Udall, Civil No. 67-323, W.D. Okla. Judgment for plaintiff, 277 F. Supp. 464 (1967); rev'd & remanded to dismiss for want of jurisdiction, 407 F.2d 394 (10th Cir. 1969); cert. granted, 396 U.S. 815 (1969); rev'd, 397 U.S. 598 (1970).

Evelyn Chambers, 33 IBLA 271 (1978)

Evelyn Chambers v. Cecil D. Andrus, Secretary of the Interior & Paul Howard, State Director, Bureau of Land Management, Civil No. C-78-0111, D. Utah. Settled by stipulation, Dec. 22, 1978.

Chaparral Resources, Inc., 39 IBLA 269 (1979)

Chaparral Resources, Inc. v. Cecil D. Andrus, Secretary of the Interior, C. J. Curtis, Area O&G Supervisor, Geological Survey & Glenna M. Lane, Chief, O&G Sec., Land Office, BLM, Civil No. C79-077, D. Wyo. Aff'd, Jan. 31, 1980.

Chargeability of Acreage Embraced in Oil and Gas Lease Offers, 71 I.D. 337 (1964) Shell Oil Co., A-30575 (Oct. 31, 1966)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulation of dismissal filed Aug. 19, 1968.

Chemi-Cote Perlite Corp. v. Arthur C. W. Bowen, 72 I.D. 403 (1965)

Bowen v. Chemi-Cote Perlite, No. 2 CA-Civ. 248, Ariz. Ct. App. Decision against Dept. by the lower court aff'd, 423 P.2d 104 (1967); rev'd, 432 P.2d 435 (1967).

Estate of Fannie Newrobe Choate, 7 IBIA 171 (1979)

Helen Edmo Sherman, Mary New Robe Redhead, Roy (Archie, Jr.) St. Goddard, Vincent Spotted Bear, Jack Edmo v. Cecil D. Andrus, Secretary of the Interior, Jeanette Rattler Choate Marceau, Civil No. CV-79-73-GF, D. Mont. Suit pending.

Christiansen Oil, Inc., 37 IBLA 52 (1978)

Christiansen Oil & Gas, Inc. v. Cecil D. Andrus, Secretary of the Interior & Daniel P. Baker, Wyo. State Director, Bureau of Land Management, Civil No. C78-257, D. Wyo. Suit pending.

Christy Corp., IBCA-461 & 569 (June 20, 1966)

Christy Corp. v. U.S., Ct. Cl. No. 291-66. Judgment for defendant, Harbor Boat Building Co., 387 F.2d 395 (1967); compromised, July 10, 1968.

U.S. v. Harco Engineering, A Division of Harbor Boat Building Co., Civil No. 68-827-S, D. Cal. Dismissed with prejudice, Feb. 24, 1970.

Citizens Committee to Save Our Public Lands, 29 IBLA 48 (1977)

Citizens Committee to Save our Public Lands, Hastings Environmental Law Society v. Thomas Kleppe, Secretary of the Interior, et al., Civil No. C-76032 SC, D. Cal. Suit pending.

Clark County, Nevada, 28 IBLA 210 (1976)

County of Clark, a political subdivision of the State of Nevada v. Thomas Kleppe, Secretary of the Interior & his successors in office & E. I. Rowland, Director, Bureau of Land Management for the State of Nevada & his successors in office, Civil No. LV-77-13 RDF, D. Nev. Rev'd, Jan. 18, 1978; no appeal.

Stephen H. Clarkson, 72 I.D. 138 (1965)

Stephen H. Clarkson v. U.S., Cong. Ref. 5-68. Trial Commr's report adverse to U.S. issued Dec. 16, 1970; Chief Commr's report concurring with the Trial Commr's report issued Apr. 13, 1971. P.L. 92-108, 85 Stat. 331, Aug. 11, 1971, enacted accepting the Chief Commr's report.

Appeals of Ethyl D. & Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (1978)

Richard Wagner et al. v. U.S. et al., Civil No. A78-106 CIV, D. Alaska. Suit pending.

Suits for Judicial Review

Clear Gravel Enterprises, Inc., A-27967, A-27970
(Dec. 29, 1959)

The Dredge Corp. v. E. J. Palmer, No. 366,
D. Nev. Judgment for defendant, Sept. 25,
1962; remanded, 338 F.2d 456 (9th Cir. 1964);
judgment for plaintiff, Aug. 8, 1966; rev'd
and remanded with direction to enter judgments
for defendants, 398 F.2d 791 (9th Cir. 1968);
cert. denied, 393 U.S. 1066 (1969).

Appeal of COAC, Inc., 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75.
Suit pending.

P. Cobb, A-29769 (May 27, 1964)

P. and Osro Cobb v. U.S., Civil No. 967,
W.D. Ark. Motion to dismiss denied,
240 F. Supp. 574 (1965); dismissed, Jan. 17,
1966.

Mrs. Hannah Cohen, 70 I.D. 188 (1963)

Hannah and Abram Cohen v. U.S., Civil
No. 3158, D.R.I. Compromised.

Colorado-Ute Electric Ass'n, 46 IBLA 35 (1980)

Colorado-Ute Electric Ass'n v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir., BLM, Charles W. Luscher, Acting State Dir., Colorado State Office, BLM, Civil No. 80-C-500, D. Colo. Suit pending.

Barney R. Colson, 70 I.D. 409 (1963)

Barney R. Colson et al. v. Stewart L. Udall, Civil No. 63-26-Civ.-Oc, M.D. Fla. Dismissed with prejudice, 278 F. Supp. 826 (1968); aff'd, 428 F.2d 1046 (5th Cir. 1970); cert. denied, 401 U.S. 911 (1971).

Barney R. Colson, 7 IBLA 40 (1972)

Barney R. Colson v. Rogers C. B. Morton, Civil No. 1960-72. Dismissed with prejudice, Feb. 7, 1974; per curiam decision, aff'd, Jan. 24, 1975; no petition.

Columbian Carbon Co., Merwin E. Liss, 63 I.D. 166 (1956)

Merwin E. Liss v. Fred A. Seaton, Civil No. 3233-56. Judgment for defendant, Jan. 9, 1958; appeal dismissed for want of prosecution, Sept. 18, 1958, D.C. Cir. No. 14,647.

Commercial Metals Co., IBCA-99 (Aug. 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No. 458-59. Judgment for plaintiff, June 16, 1966.

Appeal by the Confederated Salish & Kootenai Tribes of the Flathead Reservation, in the Matter of the Enrollment of Mrs. Elverna Y. Clairmont Baciarelli, 77 I.D. 116 (1970)

Elverna Yevonne Clairmont Baciarelli v. Rogers C. B. Morton, Civil No. C-70-2200 SC, D. Cal. Judgment for defendant, Aug. 27, 1971; aff'd, 481 F.2d 610 (9th Cir. 1973); no petition.

Consolidated Mines & Smelting Co. et al., A-30760 (Sept. 19, 1967)

H. D. Brown v. U.S. & Walter Hickel, Civil No. 69-2332-F, D. Cal. Dismissed with prejudice, Mar. 20, 1970; reconsideration denied, May 20, 1970.

Consolidation Coal Co., 1 IBSMA 273, 86 I.D. 523 (1979); 2 IBSMA 21, 87 I.D. 59 (1980)

Consolidation Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 80-3037, S.D. Ill. Suit pending.

Constitution Petroleum Co., Inc., et al., 25 IBLA 319 (1976)

Constitution Petroleum Co., Arrow Petroleum Co., & East Utah Mining Co. v. Thomas S. Kleppe et al., Civil No. C-76-257, D. Utah. Suit pending.

Appeal of Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Stewart L. Udall et al., Civil No. 366-62. Judgment for defendant, Apr. 29, 1966; aff'd, Feb. 10, 1967; cert. denied, 389 U.S. 839 (1967).

Continental Oil Co. v. Aztec Exploration & Development Co., 32 IBLA 1 (1977)

Aztec Exploration & Development Co. v. Dept. of the Interior, Office Hearings & Appeals, Interior Board of Land Appeals & Continental Oil Co., Civil No. CIV 77-827 PHX, D. Ariz. Suit pending.

Estate of Hubert Franklin Cook, 5 IBIA 42; 83 I.D. 75 (1976)

Leroy V. & Roy H. Johnson, Marlene Johnson Exendine & Ruth Johnson Jones v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0362-E, W.D. Okla. Suit pending.

Gordon L. Cooper, 51 IBLA 191 (1980)

Gordon L. Cooper v. Cecil D. Andrus et al., Civil No. 81-151-EDP, E.D. Cal. Suit pending.

Autrice C. Copeland, 69 I.D. 1 (1962)

See Leslie N. Baker et al.

Copper Valley Machine Works, Inc., IBLA 78-606, Order dismissing appeal dated Dec. 13, 1978.

Copper Valley Machine Works, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-1572. Judgment for defendant, June 29, 1979; appeal filed Aug. 28, 1979.

E. L. Cord, Donald E. Wheeler, Edward D. Neuhoﬀ,
10 IBLA 363, 80 I.D. 301 (1973)

Edward D. Neuhoﬀ & E. L. Cord v. Rogers C. B. Morton, Secretary of the Interior, Civil No. R-2921, D. Nev. Dismissed, Sept. 12, 1975 (opinion); aff'd, July 17, 1978; no petition.

Jay Frederick Cornell, 4 IBLA 11 (1971)

Jay F. Cornell v. Rogers C. B. Morton, Civil No. A-5-72, D. Alaska. Judgment for defendant, Mar. 23, 1973; aff'd, Sept. 3, 1974; no petition.

William D. Cornia et al., Wyoming 4-63-1, etc., Utah 1-63-1, etc., (Aug. 25, 1965)

William D. Cornia et al. v. Stewart L. Udall, Civil No. 4-66, N.D. Utah. Dismissed with prejudice, Sept. 1, 1967.

Cortella Coal Corp. et al., Alaska Mineral Exploration Co., 13 IBLA 158 (1973)

Cortella Coal Corp. & Alaska Mineral Exploration Co. v. Curtis V. McVee, State Dir., Bureau of Land Management, State of Alaska, Burton W. Silcock, Dir., Bureau of Land Management & Rogers C. B. Morton, Secretary of the Interior, Civil No. A-169-73, D. Alaska. Dismissed with prejudice, Jan. 13, 1976.

Appeal of Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co. et al. v. U.S., Ct. Cl. No. 119-68. Ct. opinion setting case for trial on the merits issued Mar. 19, 1971.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (1977)

Cotton Petroleum Corp. v. The Honorable Cecil Andrus, Secretary of the Interior, Stanley Speaks, Area Director for the Bureau of Indian Affairs, Anadarko Agency & Samedan Oil Corp., Civil No. CIV 77-0415T, D. Okla. Aff'd, Jan. 19, 1979; no appeal.

Cowin & Co., 83 I.D. 409 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1980, United States Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Jonah Crosby (Deceased Wisconsin Winnebago Unallotted), 81 I.D. 279 (1974)

Robert Price v. Rogers C. B. Morton, individually & in his official capacity as Secretary of the Interior & his successors in office, et al., Civil No. 74-0-189, D. Neb. Remanded to the Secretary for further administrative action, Dec. 16, 1975.

Elizabeth Barndt Crouse et al., A-30542 (Mar. 7, 1968)

Elizabeth Barndt Crouse et al v. K. Ranch, Inc., Udall, et al., Civil No. R-2063, D. Nev. Dismissed without prejudice, Apr. 15, 1969; no appeal.

Elsie May Pikok Crow, 3 IBLA 114 (1971)

Elsie May Pikok Crow v. U.S. & Rogers C. B. Morton, Civil No. F-27-71 Civ. D. Alaska. Dismissed, July 13, 1972; no appeal.

Vincent M. D'Amico, Wolt C. Stempel, 55 IBLA 116 (1981)

Vincent M. D'Amico, et al. v. James Watt et al., Civil No. 81-2050. Suit pending.

Estate of George Daniels, IA-1295 (Nov. 2, 1965)

Elizabeth Daniels et al. v. Johnson, Supt., Osage Indian Agency & Udall, Civil No. 6443, N.D. Okla. Dismissed with prejudice, Jan. 9, 1967.

David Excavating Co., Inc., Petitioner v. Office of Surface Mining Reclamation & Enforcement, Respondent, 3 IBSMA 163 (1981); 3 IBSMA 215 (1981)

David Excavating Co. v. James Watt, Secretary of the Interior, Civil No. EV-81-171-C, S.D. Ind. Suit pending.

Susan Dawson, 35 IBLA 123 (1978)

Susan Dawson v. Cecil Andrus, Secretary of the Interior, Civil No. C78-167, D. Wyo. Judgment for defendant, Mar. 22, 1979; appeal filed Apr. 17, 1979.

Oma Belle Day et al., AA-5702 (Dec. 30, 1969)

Oma Belle Day v. Walter J. Hickel et al., Civil No. A-9-70, D. Alaska. Judgment for defendant, Feb. 19, 1971; aff'd, 481 F.2d 473 (9th Cir. 1973); no petition.

John C. deArmas, Jr., P. A. McKenna, 63 I.D. 82 (1956)

Patrick A. McKenna v. Clarence A. Davis, Civil No. 2125-56. Judgment for defendant, June 20, 1957; aff'd, 259 F.2d 780 (1958); cert. denied, 358 U.S. 835 (1958).

H. R. Delasco, 39 IBLA 194; 84 I.D. 192 (1979), Blanche V. White, 40 IBLA 152; 85 I.D. 408 (1979)

Stewart Capital Corp. et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C79-123, D. Wyo. Aff'd in part, rev'd in part, Apr. 24, 1980; appeal withdrawn.

Wilbur G. Desens et al., 54 IBLA 271 (1981)

Geosearch, Inc. v. James E. Watt, Secretary of the Interior, et al., Civil No. C81-0214, D. Wyo. Suit pending.

Richard J. DiMarco, 53 IBLA 130 (1981)

Richard J. DiMarco v. James E. Watt, Secretary of the Interior, et al., Civil No. 81-2243. Suit pending.

Downtown Properties, Inc. v. Area Director, Sacramento Area Office, Bureau of Indian Affairs, 8 IBIA 248 (1981)

Downtown Properties, Inc. v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 80-1724-N(M), S.D. Cal. Suit pending.

Downtown Properties, Inc. v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 81-0835-N(C), S.D. Cal. Suit pending.

The Dredge Corp., 64 I.D. 368 (1957);
65 I.D. 336 (1958)

The Dredge Corp. v. J. Russell Penny, Civil No. 475, D. Nev. Judgment for defendant, Sept. 9, 1964; aff'd, 362 F.2d 889 (9th Cir. 1966); no petition. See also Dredge Co. v. Husite Co., 369 P.2d 676 (1962); cert. denied, 371 U.S. 821 (1962).

Drummond Coal Co., 2 IBSMA 96, 87 I.D. 196 (1980)

Drummond Coal Co. v. Cecil D. Andrus et al., Civil No. C-V-80-M-0829, N.D. Ala. Judgment for plaintiff, Apr. 20, 1981.

Alfred L. Easterday, 34 IBLA 195 (1978), Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee); 36 IBLA 181 (1978); 50 IBLA 306 (1980)

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior & Alfred L. Easterday, & J. Roe, Civil No. C78-104, D. Wyo.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, Alfred L. Easterday, & J. Roe, Civil No. C78-213, D. Wyo.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Wyo. State Office, Bureau of Land Management, Civil No. C78-214, D. Wyo.

Above actions consolidated. Remanded to Wyo. State Office Feb. 12, 1979; order of dismissal filed Feb. 13, 1979.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Wyo. State Office, BLM, Civil No. C80-0372, D. Wyo. Suit pending.

Eastern Associated Coal Corp., 82 I.D. 22 (1975)

International Union of United Mine Workers of America v. Rogers C. B. Morton, Secretary of the Interior, No. 75-1107, United States Ct. of Appeals, D.C. Cir. Dismissed by stipulation, Oct. 29, 1975.

Eastern Associated Coal Corp., 82 I.D. 311 (1975)

United Mine Workers of America v. Interior Board of Mine Operations Appeals, No. 75-1727, United States Ct. of Appeals, D.C. Cir. Petition for Review withdrawn, July 28, 1975.

Eastern Associated Coal Corp., 82 I.D. 506 (1975), Reconsideration, 83 I.D. 425 (1976), Aff'd en banc, 83 I.D. 695 (1976), 7 IBMA 152 (1976)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1090, United States Ct. of Appeals, D.C. Cir. Voluntary dismissal, Apr. 4, 1977.

Eastover Mining Co., 2 IBSMA 5, 87 I.D. 9 (1980)

Eastover Mining Co. v. Cecil D. Andrus et al., Civil No. 80-17, E.D. Ky. Suit pending.

Lawrence Edwards, A-30696, A-30705 (Apr. 21, 1967)

Lawrence Edwards v. Stewart Udall, Civil No. 2714, D. Mont. Rev'd & remanded, Nov. 18, 1968; stipulation for dismissal & order filed Aug. 4, 1970.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (1978)

Wesley Laverne Edwards v. U.S., Cecil Andrus, Secretary of the Interior, E. I. Rowland, Nevada State Director, Bureau of Land Management & Paul Unruh, Civil No. 77-0050 BRI, D. Nev. Judgment for defendant, Oct. 31, 1978; appeal filed Dec. 27, 1978.

Riter Ekker, Kerry Ekker, 38 IBLA 277 (1978)

Riter & Kerry Ekker v. Cecil Andrus & BLM, Civil No. C-80-180A, Utah. Suit pending.

Appeal of Eklutna, Inc., 1 ANCAB 165, 83 I.D. 500 (1976)

State of Alaska v. Alaska Native Claims Appeal Board et al., Civil No. A76-236, D. Alaska Suit pending.

Heldina Eluska, 21 IBLA 292 (1975)

Heldina Eluska, individ. & on behalf of all others similarly situated v. Thomas Kleppe, individ. & in his official capacity as Secretary of the Interior, Civil No. A-76-26 CIV, D. Alaska. Remanded for exhaustion of administrative remedies; reconsideration denied, Dec. 10, 1976; appeal dismissed; judgment denying plaintiffs' motion for summary judgment & remanding case to Agency, Apr. 20, 1977; appeal dismissed without prejudice, Dec. 11, 1978.

H. J. Enevoldsen, 44 IBLA 70, 86 I.D. 643 (1979)

H. J. Enevoldsen v. Cecil D. Andrus, Secretary of the Interior, Glenna M. Lane, Chief, O&G Section, Wyo. State Office, BLM & Shackelford Reeder, Civil No. C80-0047, D. Wyo. Suit pending.

Henry J. Ernst, A-27196 (Nov. 7, 1955)

Henry J. Ernst v. Secretary of the Interior, Civil No. 9303, D. Alaska. Return of service quashed & complaint dismissed, Dec. 28, 1956 (opinion); aff'd, 244 F.2d 344 (9th Cir. 1957).

David H. Evans v. Ralph C. Little, A-31044 (Apr. 10, 1970), 1 IBLA 269; 78 I.D. 47 (1971)

David H. Evans v. Rogers C. B. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for defendants, July 27, 1973; aff'd, Mar. 12, 1975; no petition.

Elsie V. Farington, 9 IBLA 191 (1973)

Elsie V. Farington v. Rogers C. B. Morton, Secretary of the Interior, Civil No. S2768, E. D. Cal. Dismissed with prejudice, Dec. 5, 1973 (opinion); no appeal.

John J. Farrelly et al., 62 I.D. 1 (1955)

John J. Farrelly & The Fifty-One Oil Co. v. Douglas McKay, Civil No. 3037-55. Judgment for plaintiff, Oct. 11, 1955; no appeal.

Ralph G. Faulkner et al., 26 IBLA 110 (1976)

Ralph G., John L., Laura Jo, R. Fred & Susan L. Faulkner v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management, et al., Civil No. 1-77-99, D. Idaho. Judgment for defendant, Nov. 16, 1979; appeal filed Jan. 10, 1980.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39; 85 I.D. 380 (1978); On Reconsideration, 40 IBLA 222; 86 I.D. 234 (1979)

Benson J. Lamp v. Cecil Andrus, Secretary of the Interior, James L. Burski, Douglas E. Henriques & Edward W. Stuebing, Administrative Judges, IBLA, Civil No. 79-1804. Dismissed as to defendant Feinberg, Mar. 17, 1981.

Chester H. Ferguson et al., 20 IBLA 224 (1975)

Chester H. Ferguson, Stella Ferguson Thayer & Howell L. Ferguson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 75-404-Civ-T-K, M.D. Fla. Dismissed without prejudice, July 16, 1975.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (1975)

Hannah Finnesand and Flora Rondeau for themselves and all others similarly situated, and Flora Rondeau as next friend for Deborah Rondeau, Mitchell Rondeau & David Rondeau for themselves and all others similarly situated v. Rogers C. B. Morton et al., Civil No. A75-42, D. Alaska. Consent decree approved by the Judge.

Thomas R. Flickinger, 40 IBLA 53 (1979)

Pamela W. Kay, 40 IBLA 240 (1979)
Robert B. Coen, 41 IBLA 55 (1979)

Robert J. Ahrens, Harry Alatchanian, Jon Arney, Peter R. Brant, Helen D. Coen, Robert B. Coen & Jack P. Corsi, et al. v. Cecil Andrus, Secretary of the Interior, Civil No. C79-166, D. Wyo. Judgment for plaintiff.

Joel Held v. Cecil Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Civil No. CA-80-0133-G, N.D. Tex. Suit pending.

Foote Mineral Co., 34 IBLA 285; 85 I.D. 171 (1978)

Foote Mineral Co. v. Cecil D. Andrus, Individ. & as Secretary of the Interior, H. William Menard, Individ. & as Director, Geological Survey, & Murray T. Smith, Individ. & as Area Mining Supervisor, Geological Survey, Civil No. LV-78-141 RDF, D. Nev. Dismissed without prejudice Nov. 15, 1979. No appeal.

Foote Mineral Co. v. U.S., Ct. Cl. No. 12-78. Suit pending.

Carl E. Forsberg et al., A-29158 et al., (Aug. 19, 1963)

Carl E. Forsberg v. Stewart L. Udall, Civil No. 63-472, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Stewart L. Udall.

Administrative Appeal of Fort Berthold Land & Livestock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 90, 87 I.D. 201 (1980)

Edward S. Danks, John Fredericks, Maurice Danks, et al. v. Harrison Fields, Acting Supt. of Fort Berthold Indian Reservation, et al., Civil No. A4-80-39, D.N.D. Suit pending.

Robert K. Foster et al., A-29857 (June 15, 1964)

Robert K. Foster et al. v. Manager, Riverside Land Office, et al., Civil No. 64-1110-WM, S.D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

T. Jack Foster, 75 I.D. 81 (1968)

Gladys H. Foster, Executrix of the estate of T. Jack Foster v. Stewart L. Udall, Boyd L. Rasmussen, Civil No. 7611, D.N.M. Judgment for plaintiff, June 2, 1969; no appeal.

Franco Western Oil Co. et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil No. 2810-59. Judgment for plaintiff, Aug. 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Myrtle A. Freer et al., A-29221 (Apr. 2, 1963)

Willis W. Ritter v. Rogers C. B. Morton et al.,
Civil No. 1-70-74, D. Idaho. Judgment for
plaintiff, Nov. 14, 1972.

Fuel Resources Development Co., 43 IBLA 19
(1979)

Fuel Resources Development Co. v. Cecil D.
Andrus, Secretary of the Interior, Dale R.
Andrus, Director of the Colo. State Office,
BLM, et al., Civil No. 79-1639, D. Colo.
Suit pending.

Harold W. Fullerton, 46 IBLA 116 (1980)

Harold W. Fullerton, v. Cecil Andrus,
Secretary of the Interior, Civil No.
80-22-M, D. Mont. Judgment for defendant,
Mar. 23, 1981.

Coral V. Funderburg, A-30514 (June 14, 1966)

Coral V. Funderburg v. Stewart L. Udall et
al., Civil No. 2818 ND, S.D. Cal. Dismissed
with prejudice, Feb. 15, 1967; aff'd, 396 F.2d
638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Stewart L. Udall,
Civil No. 219-61. Judgment for defendant,
Dec. 1, 1961; aff'd, 315 F.2d 37 (1963);
cert. denied, 375 U.S. 822 (1963).

Bernard J. & Myrle A. Gaffney, A-30327 (Oct. 28,
1965)

Bernard J. & Myrle A. Gaffney v. Stewart L.
Udall, Civil No. 3-66-22, D. Minn. Stipulated
dismissal without prejudice, Jan. 17, 1969; no
appeal.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA
113; 83 I.D. 216 (1976)

Confederated Tribes & Bands of the Yakima
Indian Nation v. Thomas Kleppe, Secretary of
the Interior, & Erwin Ray, Civil No. C-76-200,
E.D. Wash. Suit pending.

Stanley Garthofner, Duvall Bros., 67 I.D. 4 (1960)

Stanley Garthofner v. Stewart L. Udall, Civil
No. 4194-60. Judgment for plaintiff, Nov. 27,
1961; no appeal.

Estate of Gei-kaun-mah (Bert), 82 I.D. 408 (1975)

Juanita Geikaunmah Mammedaty & Imogene
Geikaumah Carter v. Rogers C. B. Morton,
Secretary of the Interior, Civil No. CIV
75-1010-E, W.D. Okla. Judgment for defen-
dant, 412 F. Supp. 283 (1976); no appeal.

Uniform Relocation Assistance Appeal of Sidney Gelb,
2 OHA 59 (1976)

Sidney Gelb v. Thomas Kleppe, individually &
officially as the Secretary of Interior, Civil
No. 76-1931. Suit pending.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No.
170-62. Dismissed with prejudice, Dec. 16,
1963.

Geosearch, Inc., IBLA 80-128, Appeal dismissed by
by Order dated Jan. 2, 1980.

Geosearch, Inc. v. Cecil D. Andrus, Secre-
tary of the Interior, et al., Civil No. C80-
0084, D. Wyo. Judgment for defendant,
Oct. 15, 1980.

Geosearch, Inc., 40 IBLA 267 (1979)

Geosearch, Inc. v. Cecil D. Andrus, Secre-
tary of the Interior, et al., Civil No. C-
79-0593, D. Utah. Judgment for defendant,
Aug. 22, 1980; no appeal.

Geosearch, Inc., 40 IBLA 401 (1979)

Geosearch, Inc. v. Cecil D. Andrus, Secre-
tary of the Interior, et al., Civil No.
C-79-350, D. Wyo. Dismissed for want of
jurisdiction, 494 F. Supp. 978 (1980); no
appeal.

Geosearch, Inc., 47 IBLA 39 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secre-
tary of the Interior, Maxwell T. Lieurance,
State Dir. BLM, Glenna M. Lane, Chief, O&G
Section, Wyo. State Office, BLM, Warren R.
Haas, Fed. Energy Corp. & Banner Oil & Gas
Ltd., Civil No. C80-0205, D. Wyo. Dismissed
Feb. 20, 1981.

Geosearch, Inc., 48 IBLA 51 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secre-
tary of the Interior, Maxwell T. Lieurance,
State Dir., Wyo. State Office, et al., Civil
No. C-80-0258. Dismissed, Feb. 20, 1981.

Geosearch, Inc., 48 IBLA 76 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secre-
tary of the Interior, et al., Civil No.
C-80-0259, D. Wyo. Dismissed, Feb. 20, 1981

Geosearch, Inc., 48 IBLA 333 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secre-
tary of the Interior, et al., Civil No.
C-80-0292, D. Wyo. Dismissed, Feb. 20, 1981

Geosearch, Inc., 49 IBLA 19 (1980)

Geosearch, Inc. v. Cecil D. Andrus et al.,
Civil No. C-80-0300, D. Wyo. Suit pending.

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil
No. 685-60. Judgment for defendant, June 20,
1961; motion for rehearing denied, Aug. 3,
1961; aff'd, 309 F.2d 653 (1962); no petition.

Charles B. Gonsales, A-27944 (Apr. 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, Jan. 12, 1962; no appeal.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., 69 I.D. 236 (1962)

Pan American Petroleum Corp. & Charles B. Gonsales v. Stewart L. Udall, Civil No. 5246, D.N.M. Judgment for defendant, June 4, 1964; aff'd, 352 F.2d 32 (10th Cir. 1965); no petition.

Charles B. Gonsales, A-29010 (Mar. 27, 1963)

Charles B. Gonsales v. Stewart L. Udall, Civil No. 5378 D.N.M. Dismissed with prejudice, Nov. 12, 1963.

John Gonzales, A-30604 (Sept. 26, 1968)

John Gonzales v. Stewart Udall, Civil No. A-128-68, D. Alaska. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, Nov. 30, 1972.

James C. Goodwin, 80 I.D. 7 (1973)

James C. Goodwin v. Dale R. Andrus, State Dir., Bureau of Land Management, Burton W. Silcock, Dir., Bureau of Land Management, & Rogers C. B. Morton, Secretary of the Interior, Civil No. C-5105, D. Colo. Dismissed, Nov. 29, 1975 (opinion); Appeal dismissed, Mar. 9, 1976.

Ray Granat et al., 25 IBLA 115 (1976)

Ray Granat v. Thomas S. Kleppe & the Department of the Interior, Civil No. C 76-274, D. Utah. Suit pending.

Estate of George Green, IA-T-11 (June 7, 1968)

Lillian Crenshaw et al. v. Secretary, Civil No. 68-317, W.D. Okla. Dismissed, Feb. 4, 1969; no appeal.

LaVonne E. Grewell, 23 IBLA 190 (1976)

LaVonne V. Grewell v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C76-602V, W.D. Wash. Judgment for defendant, May 9, 1978; appeal filed July 18, 1978.

Grindstone Butte Project, 18 IBLA 16 (1974), 24 IBLA 49 (1976)

Grindstone Butte Project et al. v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director of the Bureau of Land Management, et al., Civil No. 1-76-173, D. Idaho. Judgment for plaintiff, Sept. 8, 1977; reversed 638 F.2d 100 (9th Cir. 1981).

Estate of James Growing Thunder, Fort Peck Allottee No. 2210, deceased, 3 IBIA 18 (1974)

Nancy Growing Thunder & Vernon Growing Thunder, Minors, by and through their next friend and Guardian Ad Litem, Dale Running Bear v. Rogers Morton, individually and as Secretary of the Interior, et al., Civil No. 74-73 BLG, D. Mont. Dismissed, Mar. 15, 1976.

Celeste C. Grynberg, Dean G. Smernoff, 44 IBLA 197 (1979)

Celeste C. Grynberg & Dean G. Smernoff as Co-Trustees for the Stephen Mark Grynberg Trust v. Cecil D. Andrus, Secretary of the Interior, Dale R. Andrus, Colo. State Dir., BLM, IBLA, Joseph W. Goss & Joan B. Thompson, Judges thereof, Civil No. 79-1771, D. Colo. Judgment for defendant, Jan. 20, 1981; appeal filed Feb. 11, 1981.

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 2209-62. Judgment for defendant, Oct. 19, 1962; aff'd, 325 F.2d 633 (1963); no petition.

Gulf Oil Corp. et al., 21 IBLA 1 (1975)

Gulf Oil Corp. & Mobil Oil Corp. v. Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-2396, Section F, E.D. La. Remanded to the Secretary of the Interior for a hearing, Apr. 13, 1977.

Thomas V. Gullo & Joseph L. Randazzo, 29 IBLA 126 (1977)

Thomas V. Gullo & Joseph L. Randazzo v. Department of the Interior, Civil No. 77-0869. Aff'd Oct. 11, 1977.

Gustav Hirsch Organization, Inc., IBCA-175 (Oct. 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955), IBCA-22 (Supp.) (Mar. 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed Sept. 11, 1958. Compromise offer accepted and case closed Oct. 10, 1958.

Walter S. Haas, Jr., 55 IBLA 283 (1981)

Walter S. Haas, Jr. v. James Watt et al. Civil No. 81-816-D Oregon. Suit pending.

L. H. Hagood et al., 65 I.D. 405 (1958)

Edwin Still et al. v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

Estate of Charles Hall, Sr., 8 IBIA 53 (1980)

Charles Hall, Jr. & Ruby Martin Archdale v. Cecil Andrus, Individually & as Secretary of the Interior, Civil No. CV-80-67-GF, D. Mont. Suit pending.

William Hall et al., A-30849, A-30852, A-30857
(Sept. 16, 1968)

William Hall & Diane Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alaska. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (Sept. 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N.D. Cal. Judgment for defendant, Dec. 13, 1963 (opinion); judgment entered Feb. 11, 1964; appeal docketed Feb. 14, 1964; dismissed by plaintiff, Mar. 20, 1964.

Raymond J. Hansen et al., 67 I.D. 362 (1960)

Raymond J. Hansen et al. v. Stewart L. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Robert Schulein v. Stewart L. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (Mar. 5, 1965)

Mary L. Brandt and Natalie Z. Shell v. Stewart L. Udall, Civil No. 2659-ND, S.D. Cal. Dismissed, Sept. 30, 1965; amended complaint filed Nov. 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, Nov. 15, 1967; judgment for defendants, Mar. 26, 1968; rev'd, 427 F.2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2715-ND, S.D. Cal. Dismissed, Dec. 3, 1965.

Beverly Harrell, 12 IBLA 276 (1973)

Beverly Harrell v. A. John Hillsamer, Chief of Land & Minerals Operations, Bureau of Land Management for Nevada, & E. I. Rowland, State Dir., Bureau of Land Management, Nevada, Civil No. CIV-LV-2137, RDF, D. Nev. Dismissed, Dec. 7, 1973; motion for new trial denied, Feb. 6, 1974; no appeal.

Royal Harris, 45 IBLA 87 (1980)

Royal Harris, James Friedman & Stu Mach v. U.S., Cecil Andrus, Secretary of the Interior, George Gustafson, Townsite Trustee for the State of Alaska, Civil No. A80-174-Civ., D. Alaska. Suit pending.

Paul Harvey et al., A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest and Lalo Enriquez v. Stewart L. Udall, Civil No. 6753, D.N.M. Judgment for defendant, Jan. 25, 1967; aff'd, 384 F.2d 883 (10th Cir. 1967); no petition.

Hat Ranch, Inc., 27 IBLA 340, 83 I.D. 542 (1976)

Hat Ranch, Inc. v. Thomas Kleppe et al., Civil No. 76-668M, D.N.M. Remanded to the Interior Board of Land Appeals, June 2, 1978; appeal dismissed for lack of jurisdiction, Oct. 18, 1978.

Billy K. Hatfield et al. v. Southern Ohio Coal Co., 82 I.D. 289 (1975)

District 6 United Mine Workers of America et al. v. U.S. Dept. of Interior Board of Mine Operations Appeals, No. 75-1704, U.S. Court of Appeals, D.C. Cir. Board's decision aff'd, 562 F.2d 1260 (1977).

Headwaters Ass'n, Protestant-Appellant Cabax Mills, et al., Intervenor, IBLA 76-68, remanded to Bureau of Land Management by Order, Oct. 21, 1975; 33 IBLA 91 (1977); Appeal of Harold P. Canady et al., 29 IBLA 69 (1977); Alan Winter, Elizabeth Freeman, et al., 23 IBLA 343 (1976)

Arthur Downing, Alan Winter, Alan Troxler & Headwaters v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. 75-1128, D. Ore. Stipulated dismissal, Dec. 30, 1976.

Thomas D. Hickey, 34 IBLA 86 (1978)

Thomas D. Hickey v. U.S., Interior Board of Land Appeals, Cecil D. Andrus, Secretary of the Interior, & William L. Mathews, State Director (Idaho), BLM, Civil No. CIV 78-1142, D. Idaho. Suit pending.

Jesse Higgins, Paul Gower & William Gipson v. Old Ben Coal Corp., 81 I.D. 423 (1974)

Jesse Higgins et al. v. Cecil D. Andrus, No. 77-1363, United States Ct. of Appeals, D.C. Cir. Dismissed for lack of jurisdiction, June 20, 1977.

Hiko Bell Mining & Oil Co., 24 IBLA 255 (1976)

Hiko Bell Mining & Oil Co., a Utah Corp. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C 76-138, D. Utah. Judgment for plaintiff, Apr. 4, 1978.

Kenneth Holt, an individual, etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. U.S., Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; Per curiam decision, aff'd, Apr. 28, 1966; no petition.

Charles House, Mrs. Leonard Skinner, 33 IBLA 308 (1978)

Charles House & Eleanor Lee Burnham, as Sole Heir & Devisee of Geneva Tullis Skinner, a.k.a. Mrs. Leonard Skinner, Deceased v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CV-R-80-148-BRT, D. Nev. Suit pending.

U.S. v. Charles House, Eleanor Lee Burnham, as Sole Heir & Devisee of Geneva Tullis Skinner, a.k.a. Mrs. Leonard Skinner, Deceased, Fargo Pacific Rock & Sand, Inc. & Thiriot Sand & Gravel, Civil No. CIV-LV-81-89, RDF, D. Nev.

Actions consolidated. Suit pending.

Elbert F. Howey, 15 IBLA 208 (1974)

Elbert F. Howey v. Rogers Morton, Secretary of the Interior, Civil No. A74-56, D. Alaska. Dismissed with prejudice, Oct. 16, 1975 (opinion); no appeal.

Estate of Alvin Hudson, 5 IBIA 174 (1976)

David Russell Hudson v. U.S., Thomas S. Kleppe, Secretary of the Interior, Veradine Reed Stearns, Lois Jean Reed Saxton, Mildred Reed Anderson, Ivan Stacy Reed Cleveland, Civil No. C76-227T, W.D. Wash. Dismissed with prejudice Mar. 6, 1979; aff'd, Feb. 10, 1981.

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Dan H. Hunter, Ray H. Albrechtsen, IBLA 70-79, 565 (Order of dismissal dated Feb. 22, 1973), reconsideration denied by Order, June 1, 1973.

Dan H. Hunter & Mountain States Resources Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-393-73, D. Utah. Judgment for Defendant, Dec. 17, 1974; aff'd, 529 F.2d 645 (10th Cir. 1976); no petition.

Ray H. Albrechtsen & Mountain States Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-392-73, D. Utah. Judgment for plaintiff, Mar. 31, 1976; rev'd & remanded with directions, 570 F.2d 906 (10th Cir. 1978); cert. denied, Oct. 2, 1978.

Stanley W. Hutchinson v. Clyde W. Bishop, A-29693 (May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

H & W Oil Co., 22 IBLA 313 (1975)

H & W Oil Co. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. 763016, E.D. Ill. Judgment for defendant, Nov. 29, 1976.

John V. Hyrup, 15 IBLA 412 (1974)

John V. Hyrup v. Rogers C. B. Morton, Civil No. 74-689, D. Colo. Rev'd & remanded for further administrative proceedings, 406 F. Supp. 214 (1976); appeal filed Jan. 14, 1976; final judgment entered May 12, 1976; appeal filed July 7, 1976; aff'd, Nov. 7, 1977; no petition.

Idaho Desert Land Entries - Indian Hill Group, 72 I.D. 156 (1965), U.S. v. Ollie Mae Shearman et al. - Idaho Desert Land Entries - Indian Hill Group, 73 I.D. 386 (1966)

Wallace Reed et al. v. Dept. of the Interior et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, Sept. 3, 1965; dismissed, Nov. 10, 1965; amended complaint filed, Sept. 11, 1967.

U.S. v. Raymond T. Michener et al., Civil No. 1-65-93, D. Idaho. Dismissed without prejudice, June 6, 1966.

U.S. v. Hood Corp. et al., Civil No. 1-67-97, S.D. Idaho.

Civil Nos. 1-65-86 & 1-67-97 consolidated. Judgment adverse to U.S., July 10, 1970; rev'd, 480 F.2d 634 (9th Cir. 1973); cert. denied, 414 U.S. 1064 (1973); dismissed with prejudice subject to the terms of the stipulation, Aug. 30, 1976.

Inexco Oil Co. et al., 54 IBLA 260 (1981)

Geosearch, Inc. v. James Watt, Secretary of the Interior, et al., Civil No. C81-0215, D. Wyo. Suit pending.

Appeal of Inter*Helo, Inc., IBCA-713-5-68 (Dec. 30, 1969), 82 I.D. 591 (1975)

John Billmeyer, etc. v. U.S., Ct. Cl. No. 54-74. Remanded with instructions to admit evidence, May 30, 1975.

Interpretation of Sec. 603 of the Federal Land Policy & Management Act of 1976 - Bureau of Land Management (BLM) Wilderness Study, 86 I.D. 89 (1979)

Rocky Mountain Oil & Gas Ass'n v. Cecil D. Andrus, Secretary of the Interior & Leo Krulitz, Solicitor of the Interior, Civil No. C78-265, D. Wyo. Judgment for plaintiff, Nov. 17, 1980; appeal filed, Jan. 5, 1981.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, Mar. 27, 1968.

Estate of Cleveland Iron Shooter, 7 IBIA 212 (1979)

Teresa Ramirez, Executor of Estate of Lola Ramirez v. Secretary of the Interior, Civil No. 79-L-293, D. Neb. Suit pending.

Island Creek Coal Co., 1 IBSMA 316, 86 I.D. 724 (1979)

Island Creek Coal Co., Rebel Coal Co. v. Cecil D. Andrus et al., Civil No. 80-3137, S.W. W. Va. Suit pending.

C. J. Iverson, 82 I.D. 386 (1975)

C. J. Iverson v. Kent Frizzell, Acting Secretary of the Interior & Dorothy D. Rupe, Civil No. 75-106-Blg, D. Mont. Stipulation for dismissal with prejudice, Sept. 10, 1976.

J. A. Jones Construction Co. et al., IBCA-233 (June 17, 1960)

Palisades Contractors et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

Suits for Judicial Review

J. A. Terteling & Sons, 64 I.D. 466 (1957)

J. A. Terteling & Sons v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F.2d 926 (1968); remaining aspects compromised.

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen et al., IBCA-363 (Mar. 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W.D. Wash. Judgment for defendant, Feb. 24, 1964; no appeal.

John Walters Coal Co., Petitioner v. Office of Surface Mining Reclamation & Enforcement, Respondent, 3 IBSMA 238 (1981); 3 IBSMA 258 (1981); 3 IBSMA 259 (1981)

John Walters Coal Co. v. James Watt, et al., Civil No. 81-129, E.D. Ky. Suit pending.

Calvin C. Johnson, 35 IBLA 306 (1978)

Calvin C. Johnson v. Cecil Andrus, Secretary of the Interior, Paul Howard, Utah State Dir., BLM, Morgan S. Jensen, District Manager Kanab District, Larry Sip, Area Manager, Vermilion Resource Area, Civil No. C-78-0377, D. Utah. Suit pending.

Dale Johnson, A-30806 (Sept. 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alaska. Stipulated Dismissal, Apr. 10, 1969; no appeal.

M. G. Johnson, 78 I.D. 107 (1971)

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)

Menzel G. Johnson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CN-LV-74-158, RDF, D. Nev. Judgment for defendant, Oct. 18, 1977; aff'd, Sept. 18, 1980.

Estate of Edward Alpheus Jones, 5 IBIA 138 (1976)

Robert Sam v. U.S. et al., Civil No. 76-0552. Dismissed as to defendants U.S., Department of the Interior & the Bureau of Indian Affairs, July 30, 1976; judgment for defendant Robert C. Snashall, July 30, 1976.

June Oil & Gas, Inc., Cook Oil & Gas, Inc., 41 IBLA 394; 86 I.D. 374 (1979)

June Oil & Gas, Inc. & Cook Oil & Gas, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. 79-1334 D. Colo. Judgment for defendant, Jan. 20, 1981; appeal filed Feb. 11, 1981.

Kenneth J. Kadow et al., A-30053 (Oct. 5, 1964)

Kenneth J. Kadow et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alaska. Judgment for defendant, Sept. 7, 1967; dismissed for lack of prosecution, Feb. 2, 1968; no petition.

Kaiser Steel Corp., Petitioner v. Office of Surface Mining Reclamation & Enforcement, Respondent, 1 IBSMA 184 (1979); Kaiser Steel Corp., 2 IBSMA 158, 87 I.D. 324 (1980)

Kaiser Steel Corp. v. Office of Surface Mining & Enforcement, Civil No. 80-656-M, D.N.M. Suit pending.

Carlyle Kammerer, Jr., et al., 47 IBLA 246 (1980)

Milton L. Mounce v. Cecil D. Andrus, Secretary of the Interior & Maxwell T. Lieurance, Wyo. State Dir., BLM, Civil No. C80-0240, D. Wyo. Suit pending.

Kanawah Coal Co., 7 IBMA 234 (1977)

Kanawah Coal Co. v. Cecil D. Andrus, No. 77-1089, United States Ct. of Appeals, 4th Cir. Petition for review denied, 553 F.2d 361 (4th Cir. 1977).

R. A. Keans, A-30183 (Feb. 16, 1965)

R. A. Keans v. Stewart L. Udall et al., Civil No. 2648-ND, S.D. Cal. Defendant's motion to dismiss granted, Nov. 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975 (Sept. 16, 1965)

D. Q. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W.D. Okla. Aff'd, 265 F. Supp. 848 (1967); aff'd, 404 F.2d 97 (10th Cir. 1968); no petition.

Kerr McGee Corp., Cabot Corp., Felmont Oil Corp., and Case-Pomeroy Corp., 6 IBLA 108 (1972), Petition for Reconsideration denied, May 14, 1974

Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. v. Rogers C. B. Morton et al., Civil No. 616-72. Dismissed with prejudice, Oct. 22, 1974; aff'd, 527 F.2d 838 (1975); no petition.

Estate of San Pierre Kilkaken (Sam E. Hill), 1 IBIA 299; 79 I.D. 583 (1972), 4 IBIA 242 (1975), 5 IBIA 12 (1976)

Christine Sam & Nancy Judge v. Thomas Kleppe, Secretary of the Interior, Civil No. C-76-14, E.D. Wash. Dismissed with prejudice.

John J. King, A-28543 (Oct. 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 68-61. Judgment for plaintiff, Nov. 8, 1961; rev'd, 308 F.2d 650 (1962); no petition.

John J. King et al., Fairbanks 033268, 033279 (Sept. 25, 1964)

John J. King et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs and all other parties.

John J. King, Dorothy W. King, Fairbanks 034577
(Oct. 26, 1965)

John J. and Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alaska. Dismissed with prejudice Apr. 24, 1968.

Barbara G. Kirk and Marjorie G. Wright
See Dean Kirk

Dean Kirk, A-29018a (Apr. 26, 1963), Barbara G. Kirk and Marjorie G. Wright, A-30022 (Aug. 20, 1963)

George M. Larsen et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four are dismissed as moot, three are dismissed with prejudice.

Kirkpatrick Oil Co., 32 IBLA 329 (1977)

Kirkpatrick Oil & Gas Co. v. U.S. & Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-1247E, D. Okla. Judgment for defendant Nov. 26, 1979; appeal filed Jan. 18, 1980.

Margaret L. & Allan D. Klatt, 23 IBLA 59 (1975)

Margaret L. Klatt v. Thomas S. Kleppe, Individually & in his official capacity as Secretary of the Interior, et al., Civil No. A76-44 CIV, D. Alaska. Suit pending.

Anquita L. Klunter et al., A-30483, Nov. 18, 1965
See Bobby Lee Moore et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser and Leo J. Kottas v. Stewart L. Udall et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd, 432 F.2d 328 (9th Cir. 1970); no petition.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185 (1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum and Cale M. Shearer, A-30838 (Dec. 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall et al., Civil No. 6567, D. Ariz. Judgment for defendant, Jan. 6, 1970; no appeal.

Joseph T. Kurkowski, 15 IBLA 13 (1974)

John & Ruth E. Melcher v. Edwin Zaidlicz, Montana Dir. of the Bureau of Land Management, et al., Civil No. 74-34-BLG, D. Mont. Dismissed for want of jurisdiction, Sept. 4, 1974; dismissed, Sept. 11, 1975.

Marlin D. Kuykendall v. Phoenix Area Director & Yavapai-Prescott Tribe, 8 IBIA 76, 87 I.D. 189 (1980)

Yavapai-Prescott Indian Tribe v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV-80-464 PCT-CLH, D. Ariz. Suit pending.

Richard M. Lade, As Attorney in Fact for Santa Fe Pacific R.R., A-29121 (Jan. 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R. R. v. Udall et al., Civil No. 67-14, D. Ore. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd, 432 F.2d 254 (9th Cir. 1970); no petition.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, Mar. 6, 1963; aff'd, 324 F.2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

W. Dalton La Rue, Sr. & Juanita S. La Rue, d/b/a Winnemucca Ranch, Appellants, M. S. Land & Livestock Co., Intervenor, 9 IBLA 208 (1973)

W. Dalton La Rue, Sr. & Juanita S. La Rue v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-2827, D. Nev. Judgment for defendant, Mar. 12, 1974; aff'd, Mar. 2, 1976; rehearing denied, Apr. 21, 1976; cert. denied, Nov. 1, 1976.

Langdon H. Larwill et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd, 406 F.2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

Donald J. Laughlin, d/b/a/ Riverside Resort & Casino, 25 IBLA 41 (1976) On Reconsideration, 26 IBLA 154 (1976)

Donald J. Laughlin v. Thomas S. Kleppe, individually & as Secretary of the Interior, Curt Berklund, individually & as Director, Bureau of Land Management, & H. M. Bruce, individually & as Yuma District Manager of the BLM, Civil No. 76-237 RDF, D. Nev. Order granting motion to transfer case to Ariz. granted, May 4, 1977 (Civil No. 77-380-PHX-WPC, D. Ariz.) Suit pending.

River Queen Corp., an Arizona Corp., d/b/a River Queen Resort v. Thomas S. Kleppe, individually & as Secretary of Interior, et al., Civil No. CIV 76-873 PCT-WPC, D. Ariz. Suit pending.

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F.2d 782 (1969); no petition.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 474-64. Judgment for defendant, Oct. 5, 1964; appeal voluntarily dismissed, Mar. 26, 1965.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd, 427 F.2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Perley M. Lewis and Mildred C. Lewis, A-28707 (Dec. 30, 1963)

Perley M. Lewis et ux. v. Stewart L. Udall et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, Mar. 22, 1966; aff'd, 374 F.2d 180 (9th Cir. 1967); no petition.

Administrative Appeal of Ruth Pinto Lewis v. Superintendent of the Eastern Navajo Agency, 4 IBIA 147; 82 I.D. 521 (1975)

Ruth Pinto Lewis, Individually & as the Administratrix of the Estate of Ignacio Pinto v. Thomas S. Kleppe, Secretary of the Interior, & U.S., Civil No. CIV-76-223 M, D.N.M. Judgment for plaintiff, July 21, 1977; no appeal.

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Milton H. Lichtenwalner et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alaska. Dismissed on merits, Apr. 24, 1964; stipulated dismissal of appeal with prejudice, Oct. 5, 1964.

Roy Lindgren, 43 IBLA 139 (1979)

Roy Lindgren v. Cecil Andrus, Secretary of the Interior, Civil No. C-79-0760 A, D. Utah. Judgment for defendant, Sept. 3, 1980.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co. et al. v. Stewart L. Udall, Civil No. 63-264, D. Ore. Consolidated with Forsberg v. Udall, Schmand v. Udall, & Property Management Co. v. Udall, Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain. Stipulated dismissal on appeal, Oct. 13, 1966.

Merwin E. Liss et al., 70 I.D. 231 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; per curiam dec., aff'd, Apr. 28, 1966; no petition.

Frederick W. Lowey et al., 40 IBLA 381 (1979)

Frederick W. Lowey et al. v. Cecil D. Andrus et al., Civil No. 79-3314.

John A. Gallagher et al. v. Cecil C. Andrus et al., Civil No. 79-3315.

J. E. Ham et al. v. Cecil D. Andrus et al., Civil No. 79-3316.

Dr. Heinz & Ursula Lichtenstein, et al. v. Cecil D. Andrus et al., Civil No. 79-3317.

James M. Ross et al. v. Cecil D. Andrus et al., Civil No. 79-3318.

Richard K. Vitek et al. v. Cecil D. Andrus et al., Civil No. 79-3319.

Actions consolidated; judgment for defendant, May 28, 1981.

Leland M. Lucas, A-29228 (Dec. 10, 1962)

Leland Murray Lucas v. Stewart L. Udall et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, Oct. 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W.D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, 1 IBIA 46 (1970)

Eunice Lucero Vaile v. Rogers C. B. Morton et al., Civil No. 9585, D. Wash. Judgment for defendant, Jan. 14, 1972; aff'd, Feb. 26, 1974; no petition.

Frank Lujan, 40 IBLA 184 (1979)

Frank Lujan v. Department of the Interior, Civil No. CIV-79-455-C, D.N.M. Complaint dismissed, Feb. 11, 1980; appeal filed, Mar. 6, 1980.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey et al. v. Dept. of Agriculture, BLM, et al., Civil No. 1817, D. Mont. Judgment for defendant, Dec. 10, 1970; no appeal.

Joseph MacIsaac et al., 8 IBLA 51 (1972)

Joseph F. MacIsaac, Stanley P. Cornelius, Hillen L. Arnold, Henry E. Reeves, Starling P. Cornelius, Richard Ransom v. Rogers C. B. Morton, Civil No. A-6-73, D. Alaska. Dismissed with prejudice for want of prosecution by plaintiff, Dec. 19, 1974.

James W. McDade, 3 IBLA 226 (1971)

James W. McDade v. Rogers C. B. Morton, Civil No. 2437-71. Judgment for defendant, 353 F. Supp. 1006 (1973); per curiam decision, aff'd, 494 F.2d 1156 (D.C. Cir. 1974); no petition.

Richard E. McDonald, Resource Service Co.,
56 IBLA 12 (1981)

Richard E. McDonald & Fred L. Engle, d/b/a
Resource Service Co. v. James G. Watt et al.,
Civil No. C81-0288, D. Wyo. Suit pending.

Sheridan L. McGarry, A-28759 (Jan. 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil
No. 1262-62. Judgment for defendant, 216 F.
Supp. 314 (1962); no petition.

Appeal of Carmel J. McIntyre, 4 ANCAB 24, 86 I.D.
24, 86 I.D. 663 (1979)

Carmel J. McIntyre v. Cecil D. Andrus, Secre-
tary of the Interior, Frank Gregg, Dir., BLM,
Curtis V. McVee, Alaska State Dir., BLM,
Alaska Native Claims Appeal Board, Eklutna,
Inc. & Cook Inlet Region, Inc., Civil No.
A79-391 CIV, D. Alaska. Suit pending.

Elgin A. McKenna Executrix, Estate of Patrick A.
McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the
Estate of Patrick A. McKenna, Deceased v.
Udall, Civil No. 2001-67. Judgment for defen-
dant, Feb. 14, 1968; aff'd, 418 F.2d 1171
(1969); no petition.

Mrs. Elgin A. McKenna, Widow and Successor in
Interest of Patrick A. McKenna, Deceased v.
Walter J. Hickel, Secretary of the Interior,
et al., Civil No. 2401, D. Ky. Dismissed with
prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. U.S., Civil No. 9433,
D. Ore. Judgment for plaintiff, 178 F. Supp.
913 (1959); rev'd, 289 F.2d 908 (9th Cir.
1961).

Estate of Alvina Beauvois McLean, IA-D-27 (Feb. 14,
1969), IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. Walter J. Hickel,
Secretary of the Interior, Civil No. 2721-69,
D.C. Judgment for defendant, Mar. 13, 1970;
dismissed for lack of prosecution, Apr. 9,
1971.

Estate of Elizabeth C. Jensen McMaster, 5 IBIA 61;
83 I.D. 145 (1976)

Raymond C. McMaster v. U.S. Dept. of the
Interior, Secretary of the Interior & Bureau
of Indian Affairs, Civil No. C76-129T,
W.D. Wash. Dismissed, June 29, 1978.

Wade McNeil et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil No.
648-58. Judgment for defendant, June 5, 1959
(opinion); rev'd, 281 F.2d 931 (1960); no
petition.

Wade McNeil v. Albert K. Leonard et al., Civil
No. 2226, D. Mont. Dismissed, 199 F. Supp. 671
(1961); order, Apr. 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil No.
678-62. Judgment for defendant, Dec. 13, 1963
(opinion); aff'd, 340 F.2d 801 (1964); cert.
denied, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (Apr. 20, 1967)

Wade McNeil v. Udall, Civil No. 2705, D. Mont.
Judgment for defendant, Feb. 6, 1969 (opinion);
no appeal.

J. W. McTiernan, 11 IBLA 284 (1973)

J. W. McTiernan v. Marvin Franklin, Acting
Secretary of the Interior, Civil No. 73-481-B,
W.D. Okla. Dismissed, Apr. 4, 1974; aff'd,
Jan. 7, 1975.

J. W. McTiernan, 14 IBLA 369 (1974)

J. W. McTiernan v. Rogers C. B. Morton, Secre-
tary of the Interior, Civil No. FS-74-42-C,
W.D. Ark. Judgment for defendant, Feb. 4, 1977.

Marathon Oil Co., 81 I.D. 447 (1974), Atlantic
Richfield Co., Marathon Oil Co., 81 I.D. 457
(1974)

Marathon Oil Co. v. Rogers C. B. Morton, Sec-
retary of the Interior, et al., Civil No. C
74-179, D. Wyo.

Marathon Oil Co. v. Rogers C. B. Morton, Sec-
retary of the Interior, et al., Civil No. C
74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v.
Rogers C. B. Morton, Secretary of the Interior,
et al., Civil No. C 74-181, D. Wyo.

Actions consolidated; judgment for plaintiff,
407 F. Supp. 1301 (1975); aff'd, 556 F.2d 982
(10th Cir. 1977).

Estate of Andrew Jackson Marsh, 4 IBIA 106 (1975)

Warren Dale Ling & Francis Miles Ling, commonly
known as "Frank Ling" v. Kent Frizzell, Acting
Secretary of the Interior, Civil No. C-75-200,
E.D. Wash. Judgment for defendant, Jan. 27,
1976.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26,
1971)

Roy L. Matchett v. U.S., Ct. Cl. 40-72. Dis-
missed with prejudice, Sept. 25, 1973.

Billy Mathis et al., A-30512 (July 6, 1966)

Billy Mathis et al. v. Stewart L. Udall et al.,
Civil No. 6833, D.N.M. Dismissed with preju-
dice, Jan. 6, 1967; rendered moot by P.L.
89-365.

George C. Matthews, 19 IBLA 215 (1975)

George C. Matthews v. Executive Dir., BLM,
Civil No. 79-1295-CIV-NCR, S.D. Fla.
Dismissed, Jan. 21, 1980; no appeal.

Ralph E. May, A-29014 (Jan. 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, Mar. 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, Feb. 8, 1967.

Allan E. Mecham et al., A-30244 (Dec. 23, 1964)

Allan E. Mecham et al. v. Stewart L. Udall et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd, 369 F.2d 1 (10th Cir. 1966); no petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian etc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, Nov. 16, 1959; motion for reconsideration denied, Dec. 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tux., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supplemental dec. rendered Sept. 7, 1966; judgment for plaintiff, May 16, 1967; no appeal.

Mesa Petroleum Co., 47 IBLA 66 (1980)

Mesa Petroleum Co. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV-80-288-PCT-CAM, D. Ariz. Suit pending.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Judgment for plaintiff, 511 F.2d 548 (1975).

Albert P. Mickunas, 12 IBLA 275 (1973)

Albert P. Mickunas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-1820 WPG, C.D. Cal. Dismissed with prejudice, Sept. 30, 1974; dismissed, May 14, 1976; rehearing denied, June 3, 1976; cert. denied, Nov. 8, 1976.

Donald E. Miller, 2 IBLA 309 (1971), 15 IBLA 95 (1974)

Donald E. Miller v. Walter J. Hickel et al., Civil No. C-70-2328, D. Cal. Remanded to the Department for further proceedings, July 5, 1973; dismissed with prejudice, Feb. 6, 1975.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil No. 346-60. Judgment for defendant, Feb. 23, 1961; aff'd, 307 F.2d 676 (1962); cert. denied, 371 U.S. 967 (1963); rehearing denied, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia & Shell Oil Co. v. Stewart L. Udall, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (Aug. 10, 1959), A-28093 et al. (Oct. 30, 1959), A-28133 (Dec. 22, 1959), A-28378 (Aug. 5, 1960), A-28258 et al. (Feb. 10, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3470-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Duncan Miller, A-28057 (Oct. 16, 1959), A-28398 (Aug. 31, 1960), A-28359 (July 18, 1960), A-28433 (Aug. 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (Mar. 31, 1959), A-27810 (Jan. 16, 1959)

Duncan Miller v. Stewart L. Udall, Civil No. 3931-60. Judgment for defendant, Apr. 4, 1963; aff'd, per curiam dec., Feb. 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, Aug. 13, 1964; aff'd, Jan. 12, 1965; no petition.

Duncan Miller, A-28528 et al. (Feb. 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil No. 3904-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Duncan Miller, A-28509 (Oct. 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28172 (Feb. 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3932-60. Judgment for defendant, May 22, 1963; aff'd, Feb. 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, Aug. 13, 1964; aff'd, Jan. 12, 1965; no petition.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (Jan. 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 1268-61. Judgment for defendant, Sept. 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (Jan. 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1381-62. Judgment for defendant, Nov. 21, 1962 (opinion); appeal dismissed Apr. 12, 1963.

Suits for Judicial Review

Duncan Miller, A-28937 (Sept. 25, 1962), A-29041 (Nov. 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 4003-62. Dismissed for want of prosecution, May 1966.

Duncan Miller, A-29231 (Feb. 5, 1963)
See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-29365 (July 1, 1963), A-29521 (Aug. 29, 1963), & A-29633 (Sept. 5, 1963)

Duncan Miller v. Stewart L. Udall, Civil No. 2413-63. Dismissed, Oct. 2, 1967; no appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil No. 931-63. Dismissed for lack of prosecution, Apr. 21, 1966; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (Mar. 5, 1964), A-30067 (Mar. 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (Apr. 8, 1964), A-30192 (Apr. 9, 1964), A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 1829-64. Judgment for defendant, Sept. 28, 1965; no appeal.

Duncan Miller, A-30122 (Sept. 23, 1964), A-30451 (Nov. 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2543-64. Motion to amend granted, Feb. 15, 1966; dismissed, Apr. 3, 1969; no appeal.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. C-153-65, D. Utah. Judgment for defendant, Nov. 15, 1965; aff'd, 368 F.2d 548 (10th Cir. 1966); no petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, Oct. 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed Apr. 12, 1968; petition for mandamus denied, Oct. 14, 1968.

Duncan Miller, A-30517 (Apr. 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, Aug. 11, 1966; appeal dismissed, Sept. 14, 1967.

Duncan Miller, A-30546 (Aug. 10, 1966), A-30566 (Aug. 11, 1966), & 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, Apr. 17, 1967; no appeal.

Duncan Miller, A-30570 (Aug. 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alaska. Judgment for defendant, Mar. 13, 1967; motion for reconsideration denied, Sept. 19, 1967; no appeal.

Duncan Miller, A-29231 (Feb. 5, 1963)
See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-30669 (Nov. 8, 1966)

Duncan Miller v. Director of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, Apr. 25, 1969; no appeal.

Duncan Miller, A-30628 (Nov. 16, 1966), A-30684 (Jan. 19, 1967), A-30708 (Nov. 16, 1966), A-30797 (Sept. 12, 1967)

Duncan Miller v. Secretary of the Interior & his officers, Civil No. 7334, D.N.M. Dismissed with prejudice, Aug. 28, 1968; motion to set aside judgment denied, Sept. 24, 1968; motion for reconsideration denied, Nov. 4, 1968.

Duncan Miller, A-30891 (Mar. 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, Oct. 14, 1968; no appeal.

Duncan Miller, A-30924 (Nov. 13, 1968), A-30934 (Nov. 22, 1968), A-30966 (Oct. 29, 1968), A-31054 (Aug. 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Amended complaint dismissed without prejudice, July 20, 1970; motion to reinstate case denied, Jan. 6, 1972; motion for reconsideration denied, Feb. 7, 1972.

Duncan Miller, A-31087 (Feb. 4, 1970), A-31095 (Feb. 2, 1970), A-31148 (Mar. 2, 1970), A-31159 (Mar. 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Dismissed for failure to prosecute, Jan. 4, 1971; no appeal.

Suits for Judicial Review

Duncan Miller, 4 IBLA 274 (1972)

Duncan Miller v. Adjudicative Officers of the U.S. Geological Survey, Tulsa, Okla., & the Adjudicative Officers of the Bureau of Land Management, Civil No. 73-C-96, N.D. Okla. Dismissed with prejudice, Nov. 2, 1973; motion for rehearing denied, Nov. 14, 1973; appeal dismissed, Feb. 8, 1974.

Duncan Miller, 6 IBLA 283 (1972), 6 IBLA 507 (1972), 7 IBLA 343 (1972)

Duncan Miller v. Adjudicative Officers of the Bureau of Land Management, Dept. of the Interior, Civil No. 1757-72. Judgment for defendant, Feb. 7, 1973; motion to set aside judgment denied, Mar. 5, 1973.

Duncan Miller, 7 IBLA 343 (1972), 16 IBLA 24 (1974), 16 IBLA 71 (1974), 16 IBLA 379 (1974)

Duncan Miller v. Bureau of Land Management, Department of the Interior, Secretary of the Interior, Civil No. 74-1488. Dismissed, Dec. 4, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 74-53-BLG, D. Mont. Dismissed, Oct. 31, 1974; motion to amend complaint denied, Dec. 18, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 1146, D. Mont. Dismissed, June 29, 1973; appeal not pursued by plaintiff.

Duncan Miller v. Officers of the Department of the Interior, Civil No. 76-48 BLG, D. Mont. Suit pending.

Duncan Miller, 10 IBLA 27 (1973)

Duncan Miller v. Administrative Officers of the Bureau of Land Management & Dept. of the Interior, Civil No. 1035-73. Dismissed, Oct. 30, 1973; motions for reconsideration denied respectively, Dec. 4, 1973, Jan. 4, 1974, Apr. 5, 1974; appeal dismissed, & Aug. 27, 1975; motion for rehearing denied, Aug. 27, 1975; motion for reconsideration denied, Nov. 6, 1975; application for extension of time to file writ of certiorari filed; no petition.

Duncan Miller, 12 IBLA 199, 201, 206 (1973), IBLA 73-319, 406, 407, 410, 411, 412, IBLA 74-12, 16 (Order of dismissal dated July 17, 1973)

Duncan Miller v. The Board of Land Appeals, Department of the Interior, Civil No. 1929-73. Dismissed, Feb. 15, 1974; appeal dismissed, Aug. 27, 1975; motion for rehearing denied, Aug. 27, 1975; motion for reconsideration denied, Nov. 6, 1975; application for extension of time to file writ of certiorari filed; no petition.

Duncan Miller, 12 IBLA 201 (1973), 12 IBLA 206 (1973)

Duncan Miller v. Admin. Officers, California Bureau of Land Management, Civil No. S-2471, D. Cal. Dismissed, June 25, 1973; motion for rehearing filed June 29, 1973.

Duncan Miller, 15 IBLA 275 (1974), Order, May 13, 1974

Duncan Miller v. Operating Officers of the Bureau of Land Management, The Department of the Interior, & The Hon. Secretary of the Interior (Nominal Defendant), Civil No. 74-1116. Dismissed, Oct. 22, 1974; no appeal.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), IBLA 75-379 (dismissed by order, Mar. 20, 1975), IBLA 75-365 (dismissed by order, Mar. 24, 1975)

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-0905. Complaint dismissed, Aug. 8, 1975; reconsideration denied, Sept. 16, 1975. Appeal dismissed, Oct. 12, 1976.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), 21 IBLA 50 (1975), 22 IBLA 52 (1975), IBLA 75-379 (dismissed by order, Mar. 20, 1975), IBLA 75-365 (dismissed by order, Mar. 24, 1975), IBLA 75-251, 75-289, 75-326, 75-327, 75-382, 75-426 (dismissed by orders, Apr. 30, 1975), IBLA 75-278 (dismissed by order, May 22, 1975)

See also Evelyn R. Robertson

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-2138. Dismissed; appeal dismissed.

John R. Mimick et al., 25 IBLA 107 (1976)

John R. Mimick, James W. Belmont, Thomas J. Lauvetz & Arthur J. Denney v. Thomas Kleppe, Individually & in his capacity as Secretary of the Interior, Civil No. 76-0-240, D. Neb. Dismissed without prejudice, Dec. 21, 1976.

Mitchell Energy Corp., 32 IBLA 244 (1977)

Mitchell Energy Corp. v. Cecil D. Andrus, Individually & as Secretary of the Interior, Civil No. 77-2165. Judgment for defendant, Nov. 30, 1978; no appeal.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan et al. v. Warren J. Gray et al., Civil No. 4877 Phx., D. Ariz. Judgment for defendant, Nov. 13, 1967; aff'd, 413 F.2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough et al., Civil No. C-200-63, D. Utah. Judgment for defendant, Jan. 8, 1964; no appeal.

Donald E. Monington, 42 IBLA 380 (1979)

Donald E. Monington v. Cecil D. Andrus, Secretary of the Interior & Delmar D. Vail, Acting State Dir., BLM, Civil No. C79-366, D. Wyo. Aff'd.

Monturah Co., 10 IBLA 347 (1973)

Charles S. Pashayan, Lillie A. Pashayan, Charles S. Pashayan, Jr., & Suzanne Lillie Pashayan, Co-partners, d/b/a Monturah Co. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1083 (9th Cir.). Dismissed for lack of jurisdiction, Apr. 24, 1974; Civil No. F-74-5-Civ, E.D. Cal. Dismissed without prejudice, Apr. 11, 1974.

Bobby Lee Moore et al., 72 I.D. 505 (1965)

Anquita L. Klunter et al., A-30483 (Nov. 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Administration et al., Civil No. 3253, S.D. Cal. Judgment for defendant, Apr. 12, 1965; aff'd, 377 F.2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, Feb. 20, 1961 (opinion); aff'd, 306 F.2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., Inc., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r, 345 F.2d 833 (1965); Comm'r's report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F.2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on Oct. 6, 1969; judgment for plaintiff, Feb. 17, 1970.

Mildred A. Moss et al., 28 IBLA 364 (1977),

Reconsideration denied, Mar. 18, 1977

Mildred A. Moss, Emily C. Biester, Donald E. Howell, Robert C. Pass & Thomas L. Williams v. Cecil D. Andrus, Secretary of the Interior, Arthur W. Zimmerman, State Director, Bureau of Land Management & Raul E. Martinez, Chief, Minerals Section, Bureau of Land Management, Civil No. CIV 77-234 B, D.N.M. Judgment for defendant, Nov. 1, 1977; aff'd, Sept. 20, 1978.

Estate of Winnie Moves Camp, 7 IBIA 266 (1979)

James Moves Camp, Bernard Moves Camp, Annie Moves Camp Bad Cobb & Mary Moves Camp Between Lodges v. Cecil Andrus, Secretary of the Interior, Civil No. 80-5020, D.S.D. Suit pending.

Glenn Munsey, Earnest Scott & Arnold Scott v.

Smitty Baker Coal Co., 1 IBMA 208 (1972), 8 IBMA 43 (1977)

Glenn Munsey, Arnold Scott & Earnest Scott, Miners v. Rogers C. B. Morton, Secretary of the Interior et al., No. 72-2095, United States Court of Appeals for the District of Columbia Circuit. Vacated & remanded, 507 F.2d 1202 (1974).

Glenn Munsey v. Smitty Baker Coal Co., Ralph Baker, Smitty Baker, & P & P Coal Co., 84 I.D. 336 (1977)

Glenn Munsey v. Cecil D. Andrus, No. 77-1619, United States Ct. of Appeals, D.C. Cir. Suit pending.

Uniform Relocation Assistance Appeal of Numerous Navajo Persons Who Reside on Black Mesa in Arizona, 1 OHA 292 (1976)

Buck Austin, Lilly, Jack & Billy Chief, Alta Rose Albert, Betty Crank, Manymule's Daughter #2, Steven & Kee Lake & Kee Begay v. Morris Thompson, Comm'r of Indian Affairs, Civil No. CIV-76-418-PCT-CAM, D. Ariz. Judgment for defendant, Jan. 20, 1978; aff'd, 638 F.2d 113 (9th Cir. 1981).

Navajo Tribe of Indians v. State of Utah, 80 I.D. 441 (1973)

Navajo Tribe of Indians v. Rogers C. B. Morton, Secretary of the Interior, Joan B. Thompson, Martin Ritvo & Frederick Fishman, members of the Board of Land Appeals, Dept. of the Interior, Civil No. C-308-73, D. Utah. Dismissed with prejudice, Jan. 4, 1979.

Richard L. Nevitt, 47 IBLA 257 (1980)

Richard L. Nevitt v. Cecil D. Andrus, Secretary of the Interior, Curtis McVee, Acting State Dir., Alaska, BLM, Civil No. A80-226 CIV, D. Alaska. Suit pending.

New England Fish Co., 42 IBLA 200 (1979)

New England Fish Co. v. Robert E. Sorenson, Chief, Branch of Lands & Minerals Operations BLM, Alaska State Office, Department of the Interior, Civil No. A79-283 CIV, D. Alaska. Suit pending.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (Oct. 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alaska. Judgment for defendant, Sept. 17, 1965; aff'd, 385 F.2d 177 (9th Cir. 1967); no petition.

Robert D. Nininger, Appellant, Paul C. Kohlman, Appellee, 16 IBLA 200 (1974)

Robert D. Nininger v. Rogers C. B. Morton & Kenneth J. Sire, Civil No. 74-1246. Defendant's motion for summary judgment granted, Mar. 20, 1975; no appeal.

Leonard E. Noren, A-27583 (Sept. 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, Sept. 17, 1965; rev'd & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren et al., rev'd & remanded, 370 F.2d 845 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741
(May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Commr's report adverse to U.S. issued Dec. 10, 1971; judgment for plaintiff, 458 F.2d 64 (1972).

Northwest Citizens for Wilderness Mining Co., 33 IBLA 317 (1978)

Northwest Citizens for Wilderness Mining Co. v. The Bureau of Land Management & Edna A. Haverland, Individ. & Chief, Branch of Records & Data Management, BLM, Civil No. 78-46-M, D. Mont. Suit pending.

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, Nov. 15, 1963; case reinstated, Feb. 19, 1964; remanded, Apr. 4, 1967; rev'd & remanded with directions to enter judgment for appellant, 389 F.2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Administrator of Estate of Valentine M. O'Grady, 47 IBLA 83 (1980)

Thomas James O'Grady et al. v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 80-1782. Suit pending.

Oil and Gas Leasing on Lands Withdrawn by Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alaska. Withdrawn Apr. 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alaska. Dismissed, Apr. 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alaska. Dismissed, Oct. 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alaska. Dismissed, Oct. 29, 1963 (oral opinion); aff'd, 332 F.2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alaska. Dismissed without prejudice, Mar. 2, 1964; no appeal.

Oil Resources, Inc., 28 IBLA 394; 84 I.D. 91 (1977)

Oil Resources, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-0147, D. Utah. Suit pending.

Estate of Rose Old Bear Wilson, 4 IBIA 62 (1975)

James Harold Kindness & Sherman Wilson, Jr. v. Kent Frizzell, Acting Secretary, Department of the Interior, Civil No. 75-76-Blg, D. Mont. Judgment for defendant, Apr. 9, 1976.

Old Ben Coal Co., 81 I.D. 428, 81 I.D. 436, 81 I.D. 440 (1974)

Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals et al., Nos. 74-1654, 74-1655, 74-1656, United States Court of Appeals for the 7th Cir. Board's decision aff'd, 523 F.2d 25 (7th Cir. 1975).

Old Ben Coal Co., 82 I.D. 355 (1975)

United Mine Workers of America v. U.S. Interior Board of Mine Operations Appeals, No. 75-1852, United States Court of Appeals, D.C. Cir. Vacated & remanded with instructions to dismiss as moot, June 10, 1977.

Old Ben Coal Co., 84 I.D. 459 (1977)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1840, United States Court of Appeals, D.C. Cir. Suit pending.

George Ondola, 17 IBLA 363 (1974)
See Virginia Gail Atchison

Susie Ondola, 17 IBLA 359 (1974)
See Virginia Gail Atchison

Joseph I. O'Neill, Jr., A-30488 (Apr. 19, 1966), A-30488 (Supp.) (Dec. 7, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Remanded to the Dept. for clarification of Departmental decision, Aug. 12, 1966; order denying defendant's motion for summary judgment, without prejudice & remanding case for clarification of the affirmance of the Departmental decision, Mar. 8, 1967; no appeal; stipulated dismissal, Nov. 22, 1971.

Appeal of Ounalashka Corp., 1 ANCAB 104; 83 I.D. 475 (1976)

Ounalashka Corp., for & on behalf of its Shareholders v. Thomas Kleppe, Secretary of the Interior & his successors & predecessors in office, et al., Civil No. A76-241 CIV, D. Alaska. Suit pending.

Oyate, Inc. et al., IA-2629

Oyate, Inc. a nonprofit South Dakota Corp. et al. v. Rogers C. B. Morton, Civil No. 687-73. Dismissed, Jan. 7, 1974.

Pacific Power & Light Co., 45 IBLA 127 (1980)

Pacific Power & Light Co. v. Cecil Andrus, Secretary of the Interior, Civil No. C80-0073, D. Wyo. Suit pending.

D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977); On Reconsideration, 38 IBLA 23, 85 I.D. 408 (1978)

John S. Runnells v. Cecil Andrus, Secretary of the Interior, et al., Civil No. C-77-0268, D. Utah. Rev'd & remanded to Bureau of Land Management for issuance of the leases, Feb. 19, 1980; no appeal.

Elizabeth Pagedas, 38 IBLA 130 (1978), On Reconsideration, 40 IBLA 21 (1979)

Elizabeth Pagedas, Athena Pagedas, Kap Bae, Anna Srantos & Fred Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior & Wyo. State Office, Bureau of Land Management, Civil No. 79-2456. Suit pending.

Eugene C. Paine et al., A-27632 (Aug. 21, 1958)

Eugene C. Paine et al. v. Stewart L. Udall, Civil No. 2607-58. Judgment for plaintiff, Sept. 24, 1959; vacated & remanded, Wright v. Seaton, Misc. 1403, Jan. 11, 1960. Judgment for plaintiff, May 4, 1960; rev'd & remanded, Feb. 23, 1961; Judgment for defendant, Mar. 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (Sept. 21, 1962)

Irene Mitchell Pallin v. U.S. & Edward Elmer Mitchell, Jr., Civil No. 47552, N.D. Cal. Judgment for plaintiff, Dec. 16, 1970; rev'd, 496 F.2d 27 (9th Cir. 1974); no petition.

Pan American Petroleum Corp., IA-840 (Dec. 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961); subsequent administrative appeal & supplemental complaint filed; judgment for plaintiff, Feb. 16, 1966; no appeal.

Jack W. Parks v. L & M Coal Corp., 83 I.D. 710 (1976)

Jack W. Parks v. Thomas S. Kleppe, No. 76-2052, United States Court of Appeals, D.C. Cir. Voluntary dismissal, May 4, 1977.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58. Stipulated judgment for plaintiff, Dec. 19, 1958.

Peabody Coal Co., 34 IBLA 139 (1978), 36 IBLA 242 (1978)

Peabody Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Assistant Secretary, Land & Water Resources, Frank Gregg, Dir. Bureau of Land Management, Civil No. C78-161, D. Wyo. Judgment for plaintiff, Sept. 19, 1979; no appeal.

Mary C. Pemberton, 38 IBLA 118 (1978)

Mary C. Pemberton v. Cecil D. Andrus, Secretary of the Interior, Civil No. 80-95-BLG, D. Mont. Suit pending.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Judgment for defendant, 427 F.2d 722 (1970).

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322 (June 7, 1966)

Don & Winona James v. Mabel George Gomez et al., Civil No. S-66-104, E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, Sept. 1, 1970.

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Curtis D. Peters, 80 I.D. 595 (1973)

Curtis D. Peters v. U.S., Rogers C. B. Morton, as Secretary of the Interior, Civil No. C-75-0201 RFP, N.D. Cal. Judgment for defendant, Dec. 1, 1975; no appeal.

Frederick T. Peters et al., 41 IBLA 262 (1979)

Stewart Capital Corp., Cynthia S-H Bowers, Marvyn Carton, William Feick, Jr., Amey M. Harrison, Kenneth K. Kohrs, Phyllis Johnston, Barbara Michaels, Frederick T. Peters, R. J. Russette, Rharrc Associates, Donald Beck, Sherwin Gandee, Irwin Kramer & Joseph Fiato v. Raul Martinez, Chief, Mineral Sec., New Mexico State Office, BLM, Civil No. CIV-79-042C, D.N.M. Dismissed Oct. 28, 1980.

Kent E. Peterson, 30 IBLA 199 (1977)

Kent E. Peterson v. Cecil Andrus, Secretary of the Interior, Curt Berklund, Dir. BLM, Robert O. Buffington, State Dir., BLM, Idaho, Civil No. C-79-0527, D. Utah. Suit pending.

M. Blaine Peterson, A-28111 (Nov. 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, Nov. 13, 1961; no appeal.

Virgil V. Peterson & Hiko Bell Mining & Oil Co., 37 IBLA 18 (1978)

Virgil V. Peterson v. The Dept. of Interior & Cecil D. Andrus, Secretary of the Interior, Civil No. C 78-0463, D. Utah. Suit pending.

Hiko Bell Mining & Oil Corp. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Assistant Secretary, Land & Water Resources, & Frank Gregg, Dir., Bureau of Land Management, Civil No. C78-0465, D. Utah. Suit pending.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1959)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F.2d 793 (1968).

City of Phoenix v. Alvin B. Reeves et al., 81 I.D. 65 (1974)

Alvin B. Reeves, Genevieve C. Rippey, Leroy Reeves & Thelma Reeves, as heirs of A. H. Reeves, Deceased v. Rogers C. B. Morton, Secretary of the Interior & The City of Phoenix, a municipal Corp., Civil No. 74-117 PHX-WPC, D. Ariz. Dismissed with prejudice, Aug. 9, 1974; reconsideration denied, Sept. 24, 1974; no appeal.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, Aug. 2, 1962; aff'd, 317 F.2d 573 (1963); no petition.

Earl W. Platt, 43 IBLA 41, 86 I.D. 458 (1979)

Barbara Garcia v. Cecil Andrus, Secretary of the Interior, Earl W. & Buena Platt, Civil No. CIV-80-382 PCT, D. Ariz. Suit pending.

Platte Valley Construction Co., IBCA-168 (Aug. 28, 1958)

George Stanek et al. v. U.S., Ct. Cl. 189-72. Compromised.

Pocahontas Fuel Co., 83 I.D. 690 (1976)

Howard Mullins v. Cecil D. Andrus, No. 77-1087, United States Court of Appeals, D.C. Cir. Reversed & remanded, Dec. 31, 1980.

Pocahontas Fuel Co., 84 I.D. 489 (1977)

Pocahontas Fuel Co., Div. of Consolidation Coal Co. v. Cecil D. Andrus, No. 77-2239, United States Court of Appeals, 4th Cir. Suit pending.

John M. Pomeroy, A-28134 (Jan. 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, Aug. 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, Dec. 7, 1964.

L. O. Power et al., 22 IBLA 15 (1975)

L. O. Power, Ellis J. & Lois Dover, & Noble Ribelin v. U.S. & Kent Frizzell, Acting Secretary of the Interior, Civil No. CIV 75-708 PHX-WPC, D. Ariz. Suit pending.

Property Management Co., A-29144 (Aug. 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975), 26 IBLA 340 (1976) (Supp.)

Barbara C. Lisco v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-281, D.N.M. Remanded to the Department, Apr. 3, 1976.

Nola Grace Ptasynski v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-282, D.N.M. Remanded to the Department, Apr. 6, 1976; judgment for defendants, May 5, 1977.

R. E. Puckett, A-30419 (Oct. 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, Aug. 15, 1966.

Estate of Henry Frank Racine, 7 IBIA 1 (1978); 8 IBIA 251 (1981)

Martha Alfreda Racine Crawford et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CV-78-8-6F, D. Mont. Dismissed July 13, 1979; reversed & remanded Oct. 30, 1980; remanded to IBIA Feb. 24, 1981.

Ethel C. Radzewicz et al., A-30866 (Jan. 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, Oct. 30, 1969; dismissed, Nov. 17, 1970.

Ram Petroleums, Inc. & Ramoco, Inc., 37 IBLA 184 (1978)

Ram Petroleums, Inc. v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing & Douglas E. Henriques, Administrative Judges of the IBLA, Rev'd, 478 F. Supp. 1165 (D. Nev. 1979); appeal filed, Dec. 21, 1979.

Ramoco, Inc. & Ram Petroleums, Inc. v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing & Douglas E. Henriques, Admin. Judges of IBLA & L. Pollick, Chief Minerals Sec., Utah State Office of BLM, Civil No. C-79-0007, D. Utah. Judgment for defendants, Nov. 14, 1979; aff'd, May 27, 1981.

Estate of John S. Ramsey (Wap Tose Note) (Nez Perce Allottee No. 853, Deceased), 81 I.D. 298 (1974)

Clara Ramsey Scott v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 3-74-39, D. Idaho. Dismissed with prejudice, Aug. 11, 1975; no appeal.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, Dec. 13, 1968; subsequent Contract Officer's dec., Dec. 3, 1969; interim dec., Dec. 2, 1969; Order to Stay Proceedings until Mar. 31, 1970; dismissed with prejudice, Aug. 3, 1970.

Estate of Elgin Red Elk, IA-1230 (Nov. 13, 1964)

Bert Taunah et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, Apr. 27, 1967; rev'd & remanded, 398 F.2d 795 (10th Cir. 1968); no petition.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326; 79 I.D. 621 (1972)

George Reed, Sr. v. Rogers Morton et al., Civil No. 1105, D. Mont. Dismissed June 14, 1973; no appeal.

Henry E. Reeves, 31 IBLA 242 (1977)

Henry E. Reeves v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. A-158-73 Civ. D. Alaska. Partial judgment for plaintiff, 465 F. Supp. 1065 (1979); rev'd, Oct. 30, 1980; appeal dismissed Apr. 14, 1981.

Reichhold Energy Corp., 40 IBLA 134 (1979)

Reichhold Energy Corp. v. Cecil D. Andrus, Civil No. 79-1274. Judgment for defendant, May 30, 1980; appeal filed.

Reliable Coal Corp., 1 IBMA 97; 79 I.D. 139 (1972)

Reliable Coal Corp. v. Rogers C. B. Morton, Secretary of the Interior et al., No. 72-1477, United States Court of Appeals, 4th Cir. Board's decision aff'd, 478 F.2d 257 (4th Cir. 1973).

Republic Steel Corp., 82 I.D. 607 (1975)

Republic Steel Corp. v. Interior Board of Mine Operations Appeals, No. 76-1041, United States Court of Appeals, D.C. Cir. Rev'd & remanded, Feb. 22, 1978.

Resource Service Co., Grace K. Greco, 55 IBLA 343 (1981)

Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C80-2080, D. Wyo. Suit pending.

R. G. Brown, Jr. & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr., et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, Apr. 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, Mar. 6, 1958; no appeal.

Riley Hall Coal Co., Petitioner v. Office of Surface Mining Reclamation & Enforcement, 1 IBSMA 292 (1979)

Riley Hall Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-213, E.D. Ky. Suit pending.

Mark B. Ringstad et al., Inlet Oil Corp. et al., Robert L. Lawler et al., A-31111, A-31115, A-31134, A-31188 (Mar. 17, 1970)

Robert Lawler et al. v. Walter J. Hickel, Civil No. F-14-70, D. Alaska.

Inlet Oil Corp. & Raymond J. Ellis v. Walter J. Hickel, Civil No. A-48-70, D. Alaska. Stipulated dismissal without prejudice, Aug. 11, 1970.

Actions consolidated, June 26, 1970. Judgment for defendant, Feb. 22, 1972; no appeal.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965), reconsideration denied by letter decision dated June 23, 1967, by the Under Secretary.

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Remanded, June 28, 1966.

Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971), 2 IBIA 33, 80 I.D. 390 (1973)

Oneta Lamb Robedeaux et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Dismissed, Jan. 11, 1973.

Houston Bus Hill v. Rogers C. B. Morton, Civil No. 72-376, W.D. Okla. Judgment for plaintiff, Oct. 29, 1973; amended judgment for plaintiff, Nov. 12, 1973; appeal dismissed, June 28, 1974.

Houston Bus Hill & Thurman S. Hurst v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-528-B, W.D. Okla. Judgment for plaintiff, Apr. 30, 1975; corrected judgment, May 2, 1975; per curiam dec., vacated & remanded, Oct. 2, 1975; judgment for plaintiff, Dec. 1, 1975.

Roberts Brothers Coal Co., 2 IBSMA 284, 87 I.D. 439 (1980)

Roberts Brothers Coal Co. v. Cecil D. Andrus, et al., Civil No. 80-016900 (G), W.D. Ky. Suit pending.

Evelyn R. Robertson et al., Duncan Miller, A-29251 (Mar. 21, 1963) (see Duncan Miller, 20 IBLA 1 (1975))

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, Mar. 13, 1964; aff'd, 349 F.2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alaska. Dismissed with prejudice, Sept. 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, Apr. 4, 1964; aff'd, 349 F.2d 195 (1965); no petition.

Suits for Judicial Review

Estate of Clark Joseph Robinson, 7 IBIA 74; 85 I.D. 294 (1978)

Rene Robinson, by & through her Guardian Ad Litem, Nancy Clifford v. Cecil Andrus, Secretary of the Interior, Gretchen Robinson & Trixi Lynn Robinson Harris, Civil No. CIV-78-5097, D.S.D. Suit pending.

George Rodda, Jr., 27 IBLA 186 (1976), 37 IBLA 189 (1978)

Norman Lewis McBride, Assignor & George Rodda, Jr., Assignee v. Secretary of the Interior, Roy Maggart, an Individual, Eldon J. Fairbanks, an Individual, Civil No. CIV 79-96 TUC-MAR, D. Ariz. Suit pending.

M. E. Rogers, 47 IBLA 196 (1980)

M. E. Rogers v. U.S., Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir., BLM, Civil No. 80-114-H, D. Mont. Suit pending.

Rosebud Coal Sales Co., 37 IBLA 251; 85 I.D. 396 (1978)

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Director, Bureau of Land Management, & Maria B. Bohl, Chief, Land & Mining, Bureau of Land Management, Wyo., Civil No. C78-261, D. Wyo. Judgment for plaintiff, Oct. 17, 1979. No appeal.

Richard W. Rowe, Daniel Gaudiane, 82 I.D. 174 (1975)

Richard W. Rowe, Daniel Gaudiane v. Stanley K. Hathaway, in his official capacity as Secretary of the Interior, Civil No. 75-1152. Judgment for defendant, July 29, 1976.

Frank Roybal, Jr. v. U.S. Steel Corp., 7 IBMA 238 (1977)

Frank Roybal, Jr. v. Cecil D. Andrus, No. 77-1307, United States Court of Appeals, D.C. Cir. Suit pending.

Edgar Rundle, A-29593 (Aug. 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, Sept. 22, 1965; aff'd, 379 F.2d 112 (1967); cert. denied, 389 U.S. 845 (1967)

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Alex Sachen, Resource Service Co., 56 IBLA 116 (1981)

Alex & Mary Jane Sachen & Fred L. Engle d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C-81-0298, D. Wyo. Suit pending.

Louise Safarik, A-28307 et al. (Apr. 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Louise Safarik et al., A-28562 et al. (Jan. 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Rune E. S. Safve, 13 IBLA 212 (1973)

Rune E. S. Safve v. Secretary of the Interior, Interior Board of Land Appeals, Dir., Bureau of Land Management, State Dir., Alaska, Bureau of Land Mgmt., Civil No. A-173-73 CIV, D. Alaska. Dismissed, Mar. 4, 1975; reinstated by court order, Apr. 9, 1975; remanded to the Bureau of Land Management for proceedings, Mar. 19, 1976.

Louis Samuel et al., 8 IBLA 268 (1972)

Charles M. Goad v. U.S. & Rogers Morton, Secretary of the Interior, Civil No. 9948, D.N.M. Dismissed with prejudice, Jan. 16, 1974.

Joseph & Jean Maisano v. Rogers C. B. Morton, Secretary of the Interior, Bureau of Land Mgmt., & Board of Land Appeals, Civil No. 39720, E.D. Mich. Dismissed, Oct. 12, 1973 (opinion); no appeal.

Gordon W. & Alleyne J. Laatz v. Rogers C. B. Morton et al., Civil No. 03266, E.D. Mich. Dismissed, Feb. 20, 1975 (opinion).

Louis Samuel v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CV-74-1112-EC, C.D. Cal. Dismissed with prejudice, Aug. 26, 1974; no appeal.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd sub nom. S. Jack Hinton et al. v. Stewart L. Udall, 364 F.2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supplemented by M-36767, Nov. 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12, 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D.N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed Jan. 12, 1966; order vacating prior judgment issued Jan. 28, 1966.

Santa Fe Sand & Gravel Co., A-30657 (Apr. 25, 1967)

Santa Fe Sand & Gravel Co. v. Boyd L. Rasmussen et al., Civil No. 7135, D.N.M. Summary judgment for defendant, May 28, 1968; no appeal.

Kenneth F. Santor, 13 IBLA 208 (1973)

Kenneth F. Santor v. Rogers C. B. Morton, individually & as Secretary of the Interior, Daniel P. Baker, individually & as Dir. for the State of Wyo., Bureau of Land Mgmt., & Glenna M. Lane, individually & as Chief, O&G Section, Land Ofc., Wyo., Civil No. 5949, D. Wyo. Dismissed, Nov. 15, 1974 (opinion); no appeal.

John W. Savage, 6 IBLA 253 (1972)

Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Rogers C. B. Morton, Civil No. C-4361, D. Colo. Order holding matter in abeyance until 60 days after all appeals are completed in Oil Shale Corp., *supra*, filed June 3, 1974.

Lloyd Schade, 12 IBLA 316 (1973)

Lloyd Schade v. Cecil Andrus, Secretary of the Interior, State of Alaska, Civil No. A-76-28, D. Alaska. Judgment for plaintiff, Oct. 2, 1978; *aff'd*, 638 F.2d 122 (9th Cir. 1981).

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (Aug. 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, Apr. 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (Jan. 8, 1964). Reconsideration denied, Mar. 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814, A-30816 (Nov. 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, Oct. 31, 1968; *aff'd*, 419 F.2d 663 (1969); petition for rehearing *en banc* denied, Oct. 8, 1969; no petition.

Joseph M. Schuck, A-28603 (Aug. 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, Dec. 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, Jan. 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, Mar. 19, 1962; no appeal.

Seal and Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, Jan. 31, 1964; no appeal.

Administrative Appeal of Sessions, Inc. (A Cal. Corp.) v. Vyola Olinger Ortner (Lessor), Lease No. PSL-33, Joseph Patrick Patencio (Lessor), Lease No. PSL-36, Larry Olinger (Lessor), Lease No. PSL-41, 81 I.D. 651 (1974)

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3589 LTL, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3591 MML, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3590 FW, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

John J. Sexton, 15 IBLA 69 (1974), 20 IBLA 187 (on reconsideration)

John J. Sexton v. U.S., Rogers C. B. Morton as the Secretary of the Interior, et al., Civil No. F-74-6, D. Alaska. Dismissed, Jan. 5, 1977.

William D. Sexton et al., 9 IBLA 316 (1973), R. C. Bailey et al., 7 IBLA 266 (1972), R. C. Bailey & C. Burglin, 10 IBLA 281 (1973), Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973), Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)

C. Burglin & William D. Sexton v. Rogers C. B. Morton et al., Civil No. F-9-73, D. Alaska.

C. Burglin & R. C. Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-15-73, D. Alaska.

C. Burglin & Helen Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-19-73, D. Alaska.

C. Burglin, Earnest G. Carter, Dora A. Carter, & Michael F. Scanlan v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. F-21-73, D. Alaska.

Actions consolidated by order dated July 23, 1974. Judgment for defendant, Aug. 5, 1974; *aff'd*, 527 F.2d 486 (9th Cir. 1976); *cert. denied*, 425 U.S. 973 (1976).

Steve Shapiro v. Bishop Coal Co., 83 I.D. 59 (1976)

Bishop Coal Co. v. Thomas S. Kleppe, No. 76-1368, United States Court of Appeals, 4th Cir. Suit pending.

John W. Shaw, A-29143 (Apr. 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Ore. *Aff'd*, 264 F. Supp. 390 (1967); appeal docketed Mar. 13, 1967; appeal dismissed.

Michael Shearn, 24 IBLA 259 (1976)

Michael Shern v. Thomas S. Kleppe, Secretary of the Interior & Arthur W. Zimmerman, Director of the New Mexico State Office of the Bureau of Land Management, Civil No. CIV-76-338-P, D.N.M. Judgment for defendant, Feb. 22, 1977; aff'd, Sept. 17, 1977.

Shell Oil Co., A-30575 (Oct. 31, 1966), Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal, Aug. 19, 1968.

Estate of Albin (Alvin) Shemany, 7 IBIA 70 (1978)

Edward, Clara & Alice Longhat v. Cecil Andrus, Secretary of the Interior, Civil No. CIV 78-0929-D, W.D. Okla. Judgment for defendant, Dec. 31, 1979; appeal filed Jan. 21, 1980.

Sinclair Oil & Gas Co., 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd, 432 F.2d 587 (10th Cir. 1970); no petition.

Charles T. Sink, 82 I.D. 535 (1975)

Charles T. Sink v. Thomas S. Kleppe, Secretary of the Interior - Mining Enforcement & Safety Administration (MESA), No. 75-1292, United States Court of Appeals, 4th Cir. Vacated without prejudice to plaintiff's rights, 529 F.2d 601 (4th Cir. 1975).

Skelly Oil Co., 16 IBLA 264 (1974)

Skelly Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-411, D.N.M. Judgment for plaintiff, Aug. 7, 1975 (opinion); no appeal.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (1979)

Karen Hayes, Administratrix of the Estate of Keith C. Hayes, Deceased; Dorothy Smith v. Cecil Andrus, Secretary of the Interior, Civil No. C-LV-79-369-HEC, D. Nev. Suit pending.

Eldon L. Smith, A-30944 (Oct. 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, Feb. 3, 1970.

Geneiva Nell Maston Smith et al., 48 IBLA 199 (1980)

Moss J. Witt v. U.S. et al., Civil No. Civ-LV-210, RDF, D. Nev. Judgment for defendant, Feb. 13, 1981; appeal filed Feb. 20, 1981.

James W. Smith, 34 IBLA 146 (1978)

James W. Smith v. U.S., Cecil Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Edward L. Hastey, as Cal. State Dir., BLM, Civil No. 79-0042-E, S.D. Cal. Suit pending.

L. B. Smith et al., A-30447 (Oct. 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Mardelle M. Smith, Sherman C. Smith, 42 IBLA 136 (1979)

Mardelle M. & Sherman C. Smith v. Cecil Andrus, Secretary of the Interior, Robert Bergland, Sec. of Agriculture, Clay Beal, Supervisor, Chugach Nat'l Forest, Curtis McVee, Alaska State Dir., BLM, Civil No. A80-050 CIV, D. Alaska. Suit pending.

George Val Snow, 46 IBLA 101 (1980)

George Val Snow & Kathleen Snow v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C80-0231A, C.D. Utah. Suit pending.

Stanley C. Soho, A-28135 (Aug. 19, 1959), A-28135 Supp. (July 17, 1961), Supplemented by decision dated Feb. 1, 1963, by Director, Bureau of Land Management, approved by the Secretary Mar. 18, 1963.

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, Sept. 3, 1963; aff'd, 336 F.2d 706 (9th Cir. 1964); cert. denied, 381 U.S. 904 (1965).

Stanley C. Soho et al., A-28175 (Apr. 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, Jan. 17, 1961; no appeal.

Walter M. Sorensen, 32 IBLA 345 (1977)

Walter M. Sorensen v. Cecil D. Andrus, Secretary of the Interior, & Daniel P. Baker, State Director, Bureau of Land Management, Civil No. C77-250, D. Wyo. Aff'd, Sept. 12, 1978.

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, Dec. 2, 1970 (opinion); no appeal.

Southern Pacific Co., Louis G. Wedekind, 77 I.D. 177 (1970), 20 IBLA 365 (1975)

George C. Laden, Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, heirs of George H. Wedekind, Deceased v. Rogers C. B. Morton et al., Civil No. R-2858, D. Nev. On June 20, 1974, remanded for further agency proceedings as originally ordered in 77 I.D. 177; Dist. Ct. reserves jurisdiction; supplemental complaint filed, Aug. 1, 1975; judgment for defendant, Nov. 29, 1976; appeal filed, Jan. 27, 1977.

Southport Land & Commercial Co., Sacramento 075330 (Jan. 15, 1964)

Southport Land & Commercial Co. v. Stewart L. Udall et al., Civil No. 42385, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd, 371 F.2d 526 (9th Cir. 1967); no petition.

Southwest Welding & Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, Jan. 14, 1970; appeal dismissed, Apr. 6, 1970.

Southwestern Petroleum Corp. et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 5773, D.N.M. Judgment for defendant, Mar. 8, 1965; aff'd, 361 F.2d 650 (10th Cir. 1966); no petition.

Standard Oil Co. of California et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel et al., Civil No. A-159-69, D. Alaska. Judgment for plaintiff, 317 F. Supp. 1192 (1970); aff'd sub nom. Standard Oil Co. of Cal. v. Rogers C. B. Morton et al., 450 F.2d 493 (9th Cir. 1971); no petition.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D.N.M. Judgment for plaintiff, Jan. 21, 1965; no appeal.

John Walter Starks, 55 IBLA 266 (1981)

John Walter Starks v. James G. Watt, Civil No. C-81-0711C, D. Utah. Suit pending.

Starling Brokers et al., 6 IBLA 237 (1972)

Hillin L. Arnold et al. v. Rogers C. B. Morton et al., Civil No. A-157-72 Civ., D. Alaska. Judgment for defendant, Mar. 20, 1974; rev'd & remanded, 529 F.2d 1101 (9th Cir. 1976); aff'd June 29, 1981.

Ross Stegman, A-30812 (Nov. 21, 1967), U.S. v. Adrian Edwards, 9 IBLA 197 (1973)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, Dec. 12, 1969.

Adrian Edwards, Trustee for Ross Stegman, & real party in interest v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-58-PCT-CAM, D. Ariz. Judgment for plaintiff, Sept. 10, 1975; rev'd, Oct. 26, 1978.

Billy Stewart, N.M. 4200, etc., approved by the Secretary, May 2, 1969.

D. L. Hannifin v. Walter J. Hickel et al., Civil No. 8074, D.N.M. Judgment for defendant, Jan. 6, 1970; remanded, May 25, 1970; judgment for defendant, May 28, 1970; aff'd, 444 F.2d 200 (10th Cir. 1971); no petition.

Joe Stewart, 33 IBLA 225 (1977)

Joe Stewart v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-1038, D. Idaho. Suit pending.

Nancy L. Stewart, Resource Service Co., 56 IBLA 122 (1981)

Nancy L. Stewart & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C-81-0299, D. Wyo. Suit pending.

Elaine S. Stickelman, 9 IBLA 327 (1973)

Elaine S. Stickelman v. U.S. & Dept. of the Interior, et al., Civil No. LV-2112, D. Nev. Judgment for defendant, Aug. 29, 1975; amended order judgment for defendant, Sept. 4, 1975.

Omar Stratman, 16 IBLA 222 (1974)

Omar Stratman v. The Department of the Interior, Bureau of Land Management, Civil No. A74-103, D. Alaska. Remanded to the Department, May 6, 1976; appeal filed, June 30, 1976.

Supron Energy Corp. et al., 46 IBLA 181 (1980)

Conoco, Atlantic Richfield Co. & Tenneco Oil Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV-80-0261M, D.N.M.

Exxon Co., U.S.A. v. Cecil D. Andrus, Secretary of the Interior, Civil No. Civ-80-430-JB, D.N.M.

Supron Energy Corp., Southland Royalty Co., & Consolidated O&G Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. Civ-80-0463 JB, D.N.M.

Actions consolidated Nov. 16, 1980. Suit pending.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (Nov. 10, 1966), Florence Emily Tagala v. Norman C. Gorsuch, Special Administrator of the Estate of Amanda Price, A-31241 (Jan. 9, 1970)

Amanda Price v. Udall, Civil No. 33-67, D. Alaska. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F.2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman et al. v. Stewart L. Udall, Civil No. 1852-62. Judgment for defendant, Nov. 1, 1962 (opinion); rev'd, 324 F.2d 411 (1963); cert. granted, 376 U.S. 961 (1964); Dist. Ct. aff'd, 380 U.S. 1 (1965); rehearing denied, 380 U.S. 989 (1965).

Texaco, Inc., 75 I.D. 8 (1968)

Texaco Inc., a Corp. v. Secretary of the Interior, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); aff'd in part & remanded, 437 F.2d 636 (1970); aff'd in part & remanded, July 19, 1972.

Texas Construction Co., 64 I.D. 97 (1957), reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. U.S., Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, Dec. 14, 1961.

Estate of Tim Tieyah, 7 IBIA 234 (Oct. 17, 1979)

Marie Tieyah Carr v. Cecil Andrus, Secretary of the Interior, Civil No. CIV 79-1300-D, D. Okla. Suit pending.

Ray H. Thames, 30 IBLA 167 (1977)

Maude E. McDonald & Harriet S. Walsh v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing, Douglas E. Henriques, & Martin Ritvo, Admin. Judges Interior Board of Land Appeals, Lowell J. Udy, Dir. of Lands & Minerals, ESLO, BLM, Civil No. S77-0333(C), S.D. Miss. Judgment for defendant, Jan. 29, 1980; appeal filed.

Albert Thomas et ux. (Contestees) v. Sam A. DeVilbiss et ux. (Contestants), 10 IBLA 56 (1973)

Albert & Ellora Thomas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-139-TUC-WCF, D. Ariz. Judgment for defendant, 408 F. Supp. 1361 (1976); aff'd, 552 F.2d 871 (9th Cir. 1977).

Estate of John Thomas, Deceased Cayuse Allottee No. 223 & Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, Sept. 18, 1958; aff'd, 270 F.2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D.N.M. Dismissed with prejudice, June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall et al., Civil No. 2406-61. Judgment for defendant, Mar. 22, 1962; aff'd, 314 F.2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd, 350 F.2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, Aug. 2, 1962; aff'd, 350 F.2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, Sept. 17, 1963; no appeal.

Appeal of Toke Cleaners, 81 I.D. 258 (1974)

Thom Properties, Inc., d/b/a Toke Cleaners & Launderers v. U.S., Department of the Interior, Bureau of Indian Affairs, Civil No. A3-74-99, D.N.D. Stipulation for dismissal & order dismissing case, June 16, 1975.

Estate of Phillip Tooisgah, 4 IBIA 189; 82 I.D. 541 (1975)

Jonathan Morris & Velma Tooisgah v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0037-D, W.D. Okla. Suit pending.

Tree Land Nursery, Inc., IBCA-436 (Oct. 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

William M. Turner, 54 IBLA 111 (1981)

William M. Turner v. James G. Watt, Civil No. 81-0832JB, D.N.M. Suit pending.

Tyee Construction Co., IBCA-112 & 113 (Apr. 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968), 76 I.D. 69 (1969)

The Superior Oil Co. et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968; aff'd, 409 F.2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, Dec. 27, 1965; no appeal.

Union Oil Co. of California, 48 IBLA 145 (1980); Reconsideration Granted, Order dated Oct. 7, 1980.

Union Oil Co. of California v. Cecil D. Andrus, Civil No. 80-2278. Interior Board of Land Appeals remanded the case with instructions to consider the appeal on its merits.

Union Oil Co. of California et al., 71 I.D. 169 (1964); 72 I.D. 313 (1965)

Penelope Chase Brown et al. v. Stewart Udall, Civil No. 9202, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

Equity Oil Co. v. Stewart L. Udall, Civil No. 9462, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 9464, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.

Harlan H. Hugg et al. v. Stewart L. Udall, Civil No. 9252, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.

Union Oil Co. of California et al., 71 I.D. 169
(1964); 72 I.D. 313 (1965) (Continued)

Barnette T. Napier et al. v. Secretary of the Interior, Civil No. 8691, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

John W. Savage v. Stewart L. Udall, Civil No. 9458, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.

The Oil Shale Corp. et al. v. Secretary of the Interior, Civil No. 8680, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dis. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

The Oil Shale Corp. et al. v. Stewart L. Udall, Civil No. 9465, D. Colo. Order to Close Files & Stay Proceedings, Mar. 25, 1967.

Joseph B. Umpleby et al. v. Stewart L. Udall, Civil No. 8685, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

Union Oil Co. of California, a Corp. v. Stewart L. Udall, Civil No. 9461, D. Colo. Order to Close Files & Stay Proceedings, Mar. 25, 1967.

Union Oil Co. of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd, 289 F.2d 790 (1961); no petition.

Union Pacific R.R., 72 I.D. 76 (1965)

The State of Wyoming & Gulf Oil Corp. v. Stewart L. Udall, etc., Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd, 379 F.2d 635 (10th Cir. 1967); cert. denied, 389 U.S. 985 (1967).

United Mine Workers of America v. Inland Steel Co., 83 I.D. 87 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1377, United States Court of Appeals, 7th Cir. Board's decision aff'd, 561 F.2d 1258 (7th Cir. 1977).

United Mine Workers of America, Local Union No. 1993 v. Consolidation Coal Co., 84 I.D. 254 (1977)

Local Union No. 1993, United Mine Workers of America v. Cecil D. Andrus, No. 77-1582, United States Court of Appeals, D.C. Cir. Suit pending.

U.S. v. Alonzo A. Adams et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams et al. v. Paul B. Witmer et al., Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed, Nov. 27, 1957 (opinion); rev'd & remanded, 271 F.2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F.2d 37 (9th Cir. 1959)

U.S. v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, Jan. 29, 1962 (opinion); judgment modified, 318 F.2d 861 (9th Cir. 1963); no petition.

U.S. v. Ken & Kenneth D. Alexander, 17 IBLA 421 (1974)

Ken & Kenneth D. Alexander v. The Secretary of the Interior, Civil No. 75-465, D. Ore. Judgment for defendant, July 5, 1978.

U.S. v. A. F. Anderson et al., 15 IBLA 123 (1974)

A. F. Anderson, Wilton Dale, William F. Mackey, Arthur Roberts, Kenneth Roberts, Hugh Scott, Ester Desmarais, Louis D. Desmarais, Ernest L. Meunier, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-151, D. Wyo. Judgment for defendant, Nov. 7, 1975.

Consolidated with Walter H. Burkhardt et al. v. Rogers C. B. Morton et al., Civil No. C74-152, D. Wyo., for purposes of appeal by order of Nov. 19, 1975; dismissed, Nov. 28, 1975.

U.S. v. Arizona Exploration Co. et al., A-28876 (June 22, 1962)

Blaine J. Lord et al. v. Roy T. Helmandollar et al., Civil No. 987-63. Judgment for defendants, Sept. 30, 1963; appeal dismissed, 348 F.2d 780 (1965); cert. denied, 383 U.S. 928 (1966); rehearing denied, 384 U.S. 947 (1966).

U.S. v. Melton E. Baker, 23 IBLA 319 (1976)

Melton E. Baker v. U.S., Thomas Kleppe, Individually & as Secretary of the Interior & Stanley Gurnewald, Individually & as District Ranger of the Forest Service of the U.S. Dept. of Agriculture, Civil No. CIV 76-408 PCT WPC, D. Ariz. Complaint dismissed, Apr. 25, 1977; appeal filed, June 21, 1977.

U.S. v. E. A. & Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an individual & as Executrix of the Last Will of E. A. Barrows, Deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, Apr. 20, 1970; aff'd, 447 F.2d 80 (9th Cir. 1971).

U.S. v. A. O. Bartell, 31 IBLA 47 (1977)

A. O. Bartell v. Cecil Andrus, Secretary of the Interior, Civil No. 77-667, D. Ore. Suit pending.

U.S. v. Charles Thomas Beaird, 31 IBLA 203 (1977)

Charles Thomas Beaird v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F-77-31, D. Alaska. Suit pending.

U.S. v. J. L. Block, 80 I.D. 571 (1973)

J. L. Block v. Rogers Morton, Secretary of the Interior, Civil No. LV-74-9, BRT, D. Nev. Judgment for defendant, June 6, 1975; rev'd & remanded with instructions to remand to the Secretary of the Interior, Mar. 29, 1977; no petition.

U.S. v. Blue Bell Gold Mining Co. et al., 17 IBLA 182 (1974)

Blue Bell Gold Mining Co. v. Rogers C. B. Morton, Secretary of the Interior et al., Civil No. C74-698 S, W.D. Wash. Judgment for defendant, Sept. 18, 1975; no appeal.

U.S. v. Catherine R. Blythe, 16 IBLA 94 (1975)

Catherine R. Blythe v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV 75-750 B, D.N.M. Dismissed, Feb. 28, 1977; aff'd, Nov. 16, 1977.

U.S. v. Lloyd W. Booth, 76 I.D. 73 (1969)

Lloyd W. Booth v. Walter J. Hickel, Civil No. 42-69, D. Alaska. Judgment for defendant, June 30, 1970; no appeal.

U.S. v. R. B. Borders, A-28624 (Oct. 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, Aug. 19, 1964 (opinion); no appeal.

U.S. v. Jack Zemmy Boyd, Jr., 39 IBLA 321 (1979)

Jack Zemmy Boyd, Jr. v. Cecil D. Andrus, Secretary of the Interior, Civil No. A79-322, D. Alaska. Judgment for defendant, Mar. 14, 1980; appeal filed, Apr. 9, 1980.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969), reconsideration denied, Jan. 22, 1970

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Judgment for plaintiff, May 4, 1972; rev'd & remanded, 519 F.2d 551 (9th Cir. 1975); cert. denied, 423 U.S. 1033 (1975).

U.S. v. R. W. Brubaker et al., A-30636 (July 24, 1968); 9 IBLA 281, 80 I.D. 261 (1973)

R. W. Brubaker, a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker, & William J. Mann, a/k/a W. J. Mann v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-1228 EC, C.D. Cal. Dismissed with prejudice, Aug. 13, 1973; aff'd, 500 F.2d 200 (9th Cir. 1974); no petition.

U.S. v. R. W. Brubaker et al., A-30636 (July 24, 1968); 9 IBLA 281, 80 I.D. 261 (1973) (Continued)

U.S. v. Brubaker-Mann, Inc., R. W. Brubaker a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker & William J. Mann, a/k/a W. J. Mann, Civil No. 74-742-JWC, C.D. Cal. Stipulated agreement dated Jan. 30, 1975, and accepted by the defendants on Feb. 3, 1975; final judgment entered May 7, 1975.

U.S. v. Joe W. Bryant, 25 IBLA 247 (1976)

Joe E. Bryant v. Secretary of the Interior, Civil No. A76-84, D. Alaska. Remanded to the Agency for final consideration on the merits, Jan. 5, 1978.

U.S. v. Henrietta & Andrew Julius Bunkowski, 5 IBLA 102; 79 I.D. 43 (1972)

Henrietta & Andrew Julius Bunkowski v. L. Paul Applegate, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. R-76-182-BRT, D. Nev. Dismissed with prejudice, Nov. 27, 1978.

U.S. v. Calhoun & Howell of Oregon, Ltd., U.S. v. Lee Temple, A-31004 (Aug. 29, 1969)

Calhoun & Howell of Oregon, Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Ore. Judgment for defendant, Sept. 24, 1970; no appeal.

U.S. v. John C. Chapman et al., A-30581 (July 16, 1968)

John C. Chapman et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Judgment for defendant, Jan. 18, 1972; no appeal.

U.S. v. Charlestone Stone Products, Inc., 9 IBLA 94 (1973)

Charlestone Stone Products Co. v. Rogers Morton, Secretary of the Interior, Civil No. LV-2039-BRT, D. Nev. Vacated & remanded to the Dept. for further proceedings, Nov. 7, 1974 (opinion); aff'd & remanded, 553 F.2d 1209 (9th Cir. 1977); rev'd & remanded, 436 U.S. 604 (1978).

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, Jan. 9, 1962; no appeal.

Nick Chournos et al. v. U.S. et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd, 335 F.2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, Apr. 4, 1960; no appeal.

U.S. v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (1971)

Clear Gravel Enterprises, Inc. v. Nolan Keil, State Dir., Bureau of Land Management, State of Nevada, & Rolla Chandler, Chief Div. of Technical Services, Bureau of Land Management, Reno, Nevada, Civil No. LV-1654, D. Nev. Judgment for defendant, May 4, 1972; aff'd, Oct. 9, 1974; rehearing denied, Jan. 13, 1975; cert. denied, Apr. 21, 1975.

U.S. v. J. R. Clements, A-27751 (Dec. 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, Jan. 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, Dec. 6, 1971; appeal withdrawn, Mar. 10, 1972.

U.S. v. Alfred Coleman, A-28557 (Mar. 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, Feb. 25, 1965 (opinion); remanded, 363 F.2d 190 (9th Cir. 1966); aff'd, 379 F.2d 555 (9th Cir. 1967); cert. granted, 389 U.S. 970 (1967); rev'd & remanded to 9th Cir., 390 U.S. 599 (1968); rehearing denied, 391 U.S. 961 (1968); aff'd, 405 F.2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-581, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd, 399 F.2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Jesse W. Crawford, A-30820 (Jan. 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971); no petition.

U.S. v. Jerry L. Crow, 28 IBLA 345 (1977)

Jerry L. Crow v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F77-12-CIV, D. Alaska. Judgment for defendant, June 23, 1978.

U.S. v. Bradley F. Denham, 29 IBLA 185 (1977)

Bradley F. Denham v. Cecil Andrus, Secretary of the Interior, Civil No. CIV77-392 Phx WEC, D. Ariz. Judgment for defendant aff'd July 16, 1980.

U.S. v. Alvis F. Denison et al., 71 I.D. 144 (1964), 76 I.D. 233 (1969)

Marie W. Denison, individually & as executrix of the Estate of Alvis F. Denison, deceased v. Stewart L. Udall, Civil No. 963, D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Judgment for defendant, Jan. 31, 1972.

Reid Smith v. Stewart L. Udall, etc., Civil No. 1053, D. Ariz. Judgment for defendant, Jan. 31, 1972; aff'd, Feb. 1, 1974; cert. denied, Oct. 15, 1974.

U.S. v. J. S. Devenny, A-30289 (Aug. 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Nelson E. Devine & Raymond E. Bryant, A-30435 (Apr. 28, 1965), 2 IBLA 258 (1971)

U.S. v. Raymond E. Bryant, Civil No. 9929, E.D. Cal. Remanded to Dept. for exercise of discretion, Sept. 10, 1969; decision of BLM dated Jan. 16, 1970, aff'd by the Board of Land Appeals, May 10, 1971.

U.S. v. Aloys A. & Doris E. L. Dietemann, 26 IBLA 356 (1976)

Aloys A. & Doris E. Dietemann v. Thomas S. Kleppe, Secretary of the Interior, Curtis Berklund, Director of the Bureau of Land Management, et al., Civil No. 76-3532 RMT, C.D. Cal. Summary judgment for defendant, Feb. 9, 1977; no appeal.

U.S. v. Francis Dlouhy et al., A-27668 (Sept. 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendant, May 3, 1960; appeal dismissed, Nov. 28, 1960.

U.S. v. The Dredge Corp., A-28022 (Dec. 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, Sept. 25, 1962; remanded, 338 F.2d 456 (9th Cir. 1964); judgment for plaintiff, Aug. 8, 1966; judgment for defendants, 398 F.2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

U.S. v. The Dredge Corp., 7 IBLA 136 (1972)

The Dredge Corp. v. Rogers C. B. Morton et al., Civil No. LV-2029, D. Nev. Stipulated dismissal, Feb. 12, 1974.

U.S. v. The Dredge Corp., 54 IBLA 281 (1981)

The Dredge Corp. v. U.S. DOI et al., Civil No. CV-LV-81-504 HEC, D. Nev. Suit pending.

U.S. v. Maurice Duvall et al., 1 IBLA 103 (1970)

Maurice Duval et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Ore. Dismissed, 347 F. Supp. 501 (1972); aff'd, Dec. 19, 1973 (opinion).

U.S. v. Elkhorn Mining Co., 2 IBLA 383 (1971)

Elkhorn Mining Co. v. Rogers Morton, Civil No. 2111, D. Mont. Judgment for defendant, Jan. 19, 1973; no appeal.

U.S. v. Ralph Fairchild, A-30803 (Jan. 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971).

Suits for Judicial Review

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969)

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, Nov. 23, 1970.

U.S. v. Harlan H. Foresyth, 15 IBLA 43 (1974),
Petition for review granted by order of Oct. 30, 1975

Earl J. Brubaker, Frank Jobe, Jr. & Rexford L. Mitchell v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-W-280, D. Colo. Suit pending.

U.S. v. Everett Foster et al., 65 I.D. 1 (1958)

Everett Foster et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, Dec. 5, 1958 (opinion); aff'd, 271 F.2d 836 (1959); no petition.

U.S. v. Andrew L. Freese II, 37 IBLA 7 (1978)

Andrew L. Freese II v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV 78-1314, D. Idaho. Suit pending.

U.S. v. Jack L. Gardener, 18 IBLA 175 (1974)

Jack L. Gardener v. Secretary of the Interior, Civil No. 75-1413-R, C.D. Cal. Judgment for defendant, June 16, 1975; notice of appeal filed, Aug. 8, 1975.

U.S. v. Fred & Eileen Garner, 30 IBLA 42 (1977)

Fred & Eileen Garner v. U.S. et al., Civil No. 78-0314, D. Colo. Suit pending.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd, 405 F.2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864 (Sept. 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, Oct. 6, 1969; no appeal.

U.S. v. Golden Grigg et al., 19 IBLA 379, 82 I.D. 123 (1975)

Golden T. Grigg, LeFawn Grigg, Fred Baines, Otis H. Williams, Kathryn Williams, Lovell Taylor, William A. Anderson, Saragene Smith, Thomas M. Anderson, Bonnie Anderson, Charles L. Taylor, Darlene Baines, Luann & Paul E. Hogg v. U.S., Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-75, D. Idaho. Judgment for defendant, Nov. 6, 1979; appeal filed, Jan. 3, 1980.

U.S. v. Gunsight Mining Co., 5 IBLA 62 (1972)

Gunsight Mining Corp. v. Rogers C. B. Morton, Civil No. 72-92 Tuc, D. Ariz. Dismissed, Sept. 11, 1973; no appeal.

U.S. v. C. V. Hallenbeck et al., 21 IBLA 296 (1975)

Charles V. Hallenbeck, Jr. & Clyde A. Hallenbeck, as Individuals, as Trustees, & as Members of a Class v. Bureau of Reclamation, Civil No. 75-M-786, D. Colo. Judgment for defendant, Sept. 2, 1976; aff'd, 590 F.2d 852 (10th Cir. 1979).

U.S. v. Urban Harenberg et al., 11 IBLA 153 (1973)

Century Industries-Flagstaff, an Arizona Corp. (successor-in-interest to Urban, LaVaun, Sylvan L. & Beth Harenberg, & to Flagstaff Service & Materials Co., an Arizona Corp., bankrupt) v. U.S., Rogers Morton, Secretary of the Interior, et al., Civil No. 75-157 PCT WPC, D. Ariz. Suit pending.

U.S. v. Richard P. Haskins, A-30737 (Dec. 19, 1966),
3 IBLA 77 (1971)

Richard P. Haskins for Himself & as Admin. of The Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, Apr. 15, 1968; remanded to the Director, Bureau of Land Management for an exercise of discretion, Oct. 3, 1969.

U.S. v. Richard P. Haskins, Civil No. 72-246 JWC, C.D. Cal. Judgment for plaintiff, May 18, 1972 (opinion); rehearing denied, June 28, 1972; aff'd & remanded for further proceedings, Oct. 25, 1974; no petition.

U.S. v. Gerald D. Heden et al., 19 IBLA 326 (1975)

Gerald D. & Sharon A. Heden, John D. & Diane E. Prichard v. The Secretary of the Interior, Civil No. 75-543, D. Ore. Dismissed, Aug. 4, 1977; aff'd, Mar. 19, 1980.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd & remanded for further proceedings, 419 F.2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970); judgment for defendant, Oct. 6, 1970.

U.S. v. Joseph R. & Aletha Henri, 46 IBLA 221 (1980)

Joseph R. & Aletha Henri v. Cecil D. Andrus, Secretary of the Interior, Interior Board of Land Appeals, Frederick Fishman, Douglas E. Henriques & Joan B. Thompson, Members of the IBLA, et al., Civil No. A80-124 Civ, D. Alaska. Suit pending.

U.S. v. Charles H. Henrikson et al., 70 I.D. 212 (1963)

Charles H. Henrikson et al. v. Stewart L. Udall et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp. 510 (1964); aff'd, 350 F.2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks et al., A-30780 (Oct. 24, 1967)

Taylor T. Hicks et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ.-1202 Pct., D. Ariz. Judgment for defendant, Mar. 26, 1970.

U.S. v. Ernest Higbee et al., A-31063 (Apr. 1, 1970)

Ernest Higbee et al. v. Rogers C. B. Morton et al., Civil No. 1674, D. Nev. Judgment for defendant, May 5, 1972; vacated & remanded, July 22, 1974; amended, Sept. 13, 1974; vacated & remanded to the Secretary for taking of further evidence for reconsideration of the issues, Dec. 19, 1974.

U.S. v. Humboldt Placer Mining Co. & Del De Rosier, 79 I.D. 709 (1972)

Humboldt Placer Mining Co. & Del De Rosier v. Secretary of the Interior, Civil No. S-2755, E.D. Cal. Dismissed with prejudice, June 12, 1974; aff'd, 549 F.2d 622 (9th Cir. 1977); petition for cert. filed, June 25, 1977.

U.S. v. Ideal Cement Co., 5 IBLA 235 (1972)

Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. v. Rogers C. B. Morton, Civil No. J-12-72, D. Alaska. Judgment for defendant, Feb. 25, 1974; motion to vacate judgment denied, May 6, 1974; aff'd, 542 F.2d 1364 (9th Cir. 1976).

U.S. v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil No. 65-590, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); appeal dismissed.

U.S. v. Leroy S. Johnson, et al., 39 IBLA 337 (1979)

Leroy S. Johnson, Joseph I. Barlow, Frederick Merrill Jessop, Daniel Barlow, Edson P. Jessop, Fred M. Jessop, Dan C. Jessop & Samuel S. Barlow v. U.S., Cecil D. Andrus, Secretary of the Interior, Civil No. C-79-0486, D. Utah. Suit pending.

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)
See M. G. Johnson

U.S. v. R. B. Johnson, A-30405 (Oct. 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, Nov. 21, 1967; no appeal.

U.S. v. Robert N. Johnson et al., A-30828 (Jan. 29, 1968)

Robert N. Johnson et al. & Thelma A. Johnson as individ. & as Executrix of Nolan F. Fultz estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968); no appeal.

U.S. v. David L. & Kathryn King, A-30217 (Dec. 29, 1964)

David L. & Kathryn King v. Bureau of Land Management, Civil No. S2765, E.D. Cal. Dismissed, Oct. 30, 1973; no appeal.

U.S. v. William C. King, 15 IBLA 210 (1974)

William C. King v. U.S., & The Secretary of the Interior, et al., Civil No. 74-151-TUC-JAW, D. Ariz. Judgment for defendant, July 10, 1975; dismissed, Jan. 7, 1977.

U.S. v. Horace J. & Elsie Marie Knowlton, A-30912 (May 21, 1968)

Elsie Marie & Horace J. Knowlton v. Walter J. Hickel, Secretary of the Interior, Civil No. C-191-69, D. Utah. Judgment for defendant, Nov. 13, 1970.

U.S. v. Charles W. & Cora A. Kohl, 5 IBLA 298 (1972)

Charles W. & Cora A. Kohl v. Steve Yurich & Rogers C. B. Morton, et al., Civil No. 2155, D. Mont. Dismissed with prejudice, Jan. 17, 1973; no appeal.

U.S. v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall et al., Civil No. 1864, D. Nev. Judgment for defendant, Jan. 23, 1968; no appeal.

U.S. v. Lane Minerals, Inc., A-30497 (Mar. 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall & the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Ore. Judgment for defendant, Feb. 2, 1970.

U.S. v. Ethel Schell Larsen & Minerals Trust Corp., 9 IBLA 247 (1973)

Ethel Schell Larsen & Minerals Trust Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-119-TUC-JAW, D. Ariz. Judgment for defendant, Sept. 24, 1974; no appeal.

U.S. v. Lost Polack Mining Ass'n, 38 IBLA 101 (1978)

Lost Polack Mining & Exploration Co. v. Cecil Andrus, Secretary of the Interior, Civil No. 79-56 PHX CAM, D. Ariz. Suit pending.

U.S. v. William A. McCall & R. J. Kaltenborn, 1 IBLA 115 (1970)

William A. McCall v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-70 RDF, D. Nev. Judgment for defendant, Oct. 1, 1975.

U.S. v. William A. McCall, Sr., The Dredge Corp., Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Ass'n, Intervenor, 2 IBLA 64, 78 I.D. 71 (1971)

William A. McCall, Sr., The Dredge Corp. & Olaf H. Nelson v. John F. Boyles et al., Civil No. 74-68(RDF), D. Nev. Judgment for defendant, June 15, 1976; petition for reconsideration denied, Aug. 17, 1977; aff'd, July 10, 1980; rehearing en banc denied, Oct. 17, 1980; petition for certiorari Jan. 14, 1981.

U.S. v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21; 79 I.D. 457 (1972)

William A. McCall, Sr. & the Estate of Olaf Henry Nelson, deceased v. John S. Boyles, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. LV-76-155 RDF, D. Nev. Judgment for defendant, Nov. 4, 1977; aff'd 628 F.2d 1185 (9th Cir. 1980); petition for certiorari filed Jan. 14, 1981.

U.S. v. Kenneth McClarty, 71 I.D. 331 (1964), 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall et al., Civil No. 116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd & remanded, 408 F.2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, Aug. 13, 1969.

U.S. v. Edward T. McHenry et al., 43 IBLA 122 (1979)

Edward T. & Ruth E. McHenry v. Cecil D. Andrus, Secretary of the Interior, Bob Bergland, Secretary of Agriculture, Civil No. A79-394 CIV, D. Alaska. Suit pending.

U.S. v. Charles Maher et al., 5 IBLA 209, 79 I.D. 109 (1972)

Charles Maher & L. Franklin Mader v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-72-153, D. Idaho. Dismissed without prejudice, Apr. 3, 1973.

U.S. v. Mary A. Matthey, 67 I.D. 63 (1960)

U.S. v. Edison R. Nogueira et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, Nov. 16, 1966; rev'd & remanded, 403 F.2d 816 (1968); no petition.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall et al., Civil No. R-2107, D. Nev. Judgment for plaintiff, Dec. 15, 1969.

U.S. v. Frank & Wanita Melluzzo, 76 I.D. 160 (1969), 32 IBLA 46 (1977)

Frank & Wanita Melluzzo v. Rogers C. B. Morton, Civil No. CIV 73-308 PHX CAM, D. Ariz. Judgment for defendant, June 19, 1974; aff'd in part & rev'd & remanded in part, 534 F.2d 860 (9th Cir. 1976); no petition.

U.S. v. Frank & Wanita Melluzzo, 76 I.D. 160 (1969), 32 IBLA 46 (1977) (Continued)

Frank & Wanita Melluzzo v. Cecil Andrus, Secretary of the Interior, Civil No. CIV-79-282 PHX, CAM, D. Ariz. Judgment for defendant, May 20, 1980.

U.S. v. Frank & Wanita Melluzzo, et al., 76 I.D. 181 (1969); reconsideration, 1 IBLA 37, 77 I.D. 172 (1970)

WJM Mining & Development Co. et al. v. Rogers C. B. Morton, Civil No. 70-679, D. Ariz. Judgment for defendant, Dec. 8, 1971; dismissed, Feb. 4, 1974.

U.S. v. Mineral Ventures, Ltd., 80 I.D. 792 (1973)

Mineral Ventures, Ltd. v. The Secretary of the Interior, Civil No. 74-201, D. Ore. Judgment for defendant, July 10, 1975; vacated & remanded, May 3, 1977; modified amended judgment, Sept. 9, 1977.

U.S. v. G. Patrick Morris et al., 82 I.D. 146 (1975)

G. Patrick Morris, Joan E. Roth, Elise L. Neeley, Lyle D. Roth, Vera M. Baltzor (formerly Vera M. Noble), Charlene S. & George R. Baltzor, Juanita M. & Nellie Mae Morris, Milo & Peggy M. Axelsen, & Farm Development Corp. v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-74, D. Idaho. Aff'd in part, rev'd in part, Dec. 20, 1976; rev'd, 593 F.2d 851 (9th Cir. 1978). Dismissed with prejudice, June 23, 1980; motion to vacate denied Oct. 9, 1980; appeal filed Dec. 3, 1980.

U.S. v. Ernest Evon Moseley, A-30971 (Dec. 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971); no petition.

U.S. v. G. C. (Tom) Mulkern, A-27746 (Jan. 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, Feb. 19, 1963 (opinion); aff'd, 326 F.2d 896 (9th Cir. 1964); no petition.

U.S. v. Christian F. Murer, 4 IBLA 242 (1972)

Christian F. Murer v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-3941, D. Colo. Judgment for defendant, Mar. 22, 1973 (oral opinion); no appeal.

U.S. v. National Motor Service Co., 15 IBLA 23 (1974)

National Motor Service Co., Successor to Gary K. Lloyd v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-74-41, D. Idaho. Complaint dismissed with prejudice, Feb. 24, 1976.

U.S. v. Leonard F. Nelson, IBLA 71-57 (Dec. 6, 1972) (Supp. I), 28 IBLA 314 (1977)

Leonard F. Nelson v. Rogers C. B. Morton et al., Civil No. A-3-73, D. Alaska. Dismissed with prejudice, 368 F. Supp. 692 (1974); rev'd & remanded, Jan. 14, 1976; no petition.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, Nov. 28, 1966; no appeal.

U.S. v. New Jersey Zinc Co., 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. Corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Dismissed with prejudice, Jan. 5, 1970.

U.S. v. W. G. & Eva Rose Nickol, 9 IBLA 117 (1973)

W. G. & Eva Rose Nickol v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 9995 D.N.M. Dismissed, Oct. 5, 1973; rev'd & remanded, 501 F.2d 1389 (10th Cir. 1974); remanded to the Dept. for further proceedings, Jan. 30, 1975; motion to compel compliance denied, July 24, 1978.

U.S. v. Lloyd O'Callaghan, Sr. et al., 79 I.D. 689 (1972), U.S. v. Lloyd O'Callaghan, Sr., Contest No. R-04845 (July 7, 1975), 29 IBLA 333 (1977)

Lloyd O'Callaghan, Sr., Individually & as Executor of the Estate of Ross O'Callaghan v. Rogers Morton et al., Civil No. 73-129-S, S.D. Cal. Aff'd in part & remanded, May 14, 1974. Judgment for defendant, May 16, 1978, aff'd, May 8, 1980.

U.S. v. Wilma L. Oldaker, A-30378 (Aug. 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil No. A-98-65, D. Alaska. Stipulated dismissal with prejudice, Mar. 3, 1967; no appeal.

U.S. v. J. R. Osborne et al., 77 I.D. 83 (1970), 28 IBLA 13 (1976), reconsideration denied by order dated Jan. 4, 1977

J. R. Osborne, individually & on behalf of R. R. Borders et al. v. Rogers C. B. Morton et al., Civil No. 1564, D. Nev. Judgment for defendant, Mar. 1, 1972; remanded to Dist. Ct. with directions to reassess Secretary's conclusion, Feb. 22, 1974; remanded to the Dept. with orders to re-examine the issues, Dec. 3, 1974.

Bradford Mining Corp., Successor of J. R. Osborne, agent for various persons v. Cecil D. Andrus, Secretary of the Interior, Civil No. LV-77-218, RDF, D. Nev. Suit pending.

U.S. v. Ralph Page et al., 19 IBLA 255 (1975)
43 IBLA 390 (1979)

Forest O. Garrigus, Jr., Forest O. Garrigus III, Ralph Page, Leona Aslett v. Cecil D. Andrus, Secretary of the Interior, Civil No. 80-314, D. Ore. Suit pending.

U.S. v. Pittsburgh Pacific Co., 30 IBLA 388;
84 I.D. 282 (1977)

Pittsburgh Pacific Co. v. U.S., Dept. of the Interior, Cecil Andrus, Joseph W. Goss, Anne Poindexter Lewis, Martin Ritvo, State of South Dakota, Dept. of Environmental Protection & Allen Lockner, Civil No. CIV77-5055, W.D.S.D. Suit pending.

State of South Dakota v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV 77-5058, W.D.S.D. Dismissed, Dec. 26, 1978; aff'd, Feb. 12, 1980; cert. denied, Sept. 4, 1980.

U.S. v. Paul C. Poncia et al., 11 IBLA 302 (1973)

Paul C., Opal L., John C., & Dorothy Poncia v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-73-93, D. Idaho. Remanded to the Secretary of Interior for consideration, Sept. 28, 1976.

U.S. v. Richard C. Porter et al., A-29882 (Apr. 24, 1964)

Hal W. Eldridge et al. v. Secretary of the Interior, Civil No. 64-353, D. Ore. Judgment for defendant, Dec. 15, 1965 (opinion); no appeal.

U.S. v. E. V. Pressentin et al., A-27495 (Apr. 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered, July 24, 1959.

E. V. Pressentin et al. v. Fred A. Seaton, Civil No. 1907-59. Judgment for defendant, Jan. 15, 1960; rev'd & remanded, 284 F.2d 195 (1960); see A-30004, 71 I.D. 447 (1964).

U.S. v. E. V. Pressentin & devisees of the H. S. Martin Estate, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. Stewart L. Udall & Charles Stoddard, Civil No. 1194-65. Judgment for defendant, Mar. 19, 1969; no appeal.

U.S. v. C. F. Pruess, Sr., A-28641 (Aug. 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 1331-62. Judgment for defendant, May 12, 1964; remanded, 359 F.2d 615 (1965); judgment for defendant, Jan. 4, 1966; per curiam dec., remanded for transfer to Dist. Ct. for Oregon. Not reported.

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 67-167, D. Ore. Judgment for defendant, 286 F. Supp. 138 (1968); aff'd, 410 F.2d 750 (9th Cir. 1969); cert. denied, 396 U.S. 967 (1969); rehearing denied, 397 U.S. 1003 (1970).

U.S. v. William D. Pulliam et al., 1 IBLA 143 (1970)

William D. Pulliam et al. v. Secretary of the Interior, Civil No. 71-649, D. Ariz. Dismissed on the merits, Mar. 29, 1973; no appeal.

U.S. v. Chester L. Ramsey, 29 IBLA 243 (1977)

Chester Lee Ramsey v. Cecil Andrus, Secretary of the Interior, et al., Civil No. CIV S-77-348-TJM, D. Cal. Suit pending.

U.S. v. Marvin C. Ramsey et al., 14 IBLA 152 (1974)

Marvin C. & Vesta Ruth Ramsey v. The Secretary of the Interior, Civil No. 74-192, D. Ore. Dismissed, May 1, 1975; aff'd, Mar. 22, 1977.

U.S. v. Ramsher Mining & Engineering Co., 13 IBLA 268 (1973)

Ramsher Mining & Engineering Co. v. Secretary of the Interior, Bureau of Land Management, Civil No. CV-74-3062-WMB, C.D. Cal. Dismissed with prejudice, Feb. 11, 1975; aff'd, Oct. 15, 1976.

U.S. v. Cecil R. Reed, A-30354 (Sept. 29, 1965)

Cecil R. Reed v. Stewart L. Udall et al., Civil No. 1784, D. Nev. Judgment for defendant, Dec. 19, 1967; aff'd, 416 F.2d 377 (9th Cir. 1969); cert. denied, 397 U.S. 924 (1970).

U.S. v. George A. & Dorothy Relyea, A-30909 (June 25, 1968)

George A. & Dorothy Relyea v. Stewart Udall, Secretary of the Interior, Civil No. 3-68-20, D. Idaho. Judgment for defendant, Feb. 19, 1970; no appeal.

U.S. v. Amos D. & Lena S. Robinette, A-31036, A-31133 (Mar. 4, 1970)

Amos D. Robinette v. Rogers C. B. Morton et al., Civil No. 71-1156-HP, C.D. Cal. Complaint dismissed with prejudice, Oct. 22, 1971; appeal dismissed, Apr. 18, 1972.

U.S. v. R. E. & Barbara J. Rodgers, 32 IBLA 77 (1977)

R. E. & Barbara Rodgers v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-119, D. Ore. Judgment for defendant, Mar. 26, 1980; amended judgment Oct. 2, 1980; appeal filed Nov. 12, 1980.

U.S. v. Robert A. Rukke, Registered Agent, Valumines, Inc. et al., 32 IBLA 155 (1977)

Robert A. Rukke, Secretary, Valumines, Inc., Milo Moore, William Soren, George Dunlap (aka George Dunlop) & Estate of Eugene Francis Dunlap (aka Gene Dunlop) v. U.S., Civil No. C77-206T, D. Wash. Suit pending.

U.S. v. Dan S. Russell, 40 IBLA 309 (1979)

Dan S. Russell v. John R. McGuire, Individ. & as Chief, Forest Service, DOA, Bob Berglund, Individ. & as Sec. of Agriculture, Frank Gregg, Individ. & as Dir., BLM, Cecil D. Andrus, Individ. & as Secretary of the Interior, Civil No. 79-949, D. Ore. Suit pending.

U.S. v. Robert B. Sainberg, 5 IBLA 270 (1972)

Robert B. Sainberg, Rose Mary Druse, Frank Patrick Vallely, Jr., & William J. Vallely v. Rogers C. B. Morton, Civil No. 72-217-PCT, D. Ariz. Dismissed, 363 F. Supp. 1259 (1973); no appeal.

U.S. v. Edwin R. Saurers et al., A-30097 (July 9, 1964)

Edwin R. Saurers et al. v. Stewart L. Udall, Civil No. 6245, W.D. Wash. Judgment for defendant, July 19, 1965; no appeal.

U.S. v. Charles L. Seeley et al., A-28127 (Jan. 28, 1960)

Charles L. Seeley et al. v. Secretary of the Interior, Civil No. 3693-60 & No. 41094, N.D. Cal. Judgment for defendant, July 29, 1964; appeal dismissed, Dec. 16, 1964.

U.S. v. James S. Sette, 46 IBLA 335 (1980)

James S. Sette v. The Secretary of the Interior, Civil No. S-80-593MLS, E.D. Cal. Suit pending.

U.S. v. Ollie Mae Shearman et al., 73 I.D. 386 (1966)

See Idaho Desert Land Entries - Indian Hill Group

U.S. v. Silverton Mining & Milling Co., IBLA 70-22 (Sept. 23, 1970)

Multiple Use, Inc. v. Rogers C. B. Morton, Civil No. 71-211, D. Ariz. Judgment for defendant, 353 F. Supp. 184 (1972); aff'd, 504 F.2d 448 (9th Cir. 1974); no petition.

U.S. v. Thomas R. Shuck, A-27965 (Feb. 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, Dec. 7, 1961; no appeal.

U.S. v. C. F. Snyder et al., 72 I.D. 223 (1965)

Ruth Snyder, Adm'r(x) of the Estate of C. F. Snyder, Deceased et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp. 110 (1967); rev'd, 405 F.2d 1179 (10th Cir. 1968); cert. denied, 396 U.S. 819 (1969).

U.S. v. Southern Pacific Co., 77 I.D. 41 (1970)

Southern Pacific Co. et al. v. Rogers C. B. Morton et al., Civil No. S-2155, E.D. Cal. Judgment for defendant, Nov. 20, 1974.

U.S. v. Clarence T. & Mary D. Stevens, 77 I.D. 97 (1970)

Clarence T. & Mary D. Stevens v. Walter J. Hickel, Civil No. 1-70-94, D. Idaho. Judgment for defendant, June 4, 1971.

U.S. v. Charles E. Stewart, A-28966 (Sept. 25, 1962)

Charles E. Stewart v. Gordon Penny et al., Civil No. 1619, D. Nev. Judgment for plaintiff, 238 F. Supp. 821 (1965); no appeal.

U.S. v. Cornelius D. Sullivan (a/k/a Corney Sullivan) & Josie L. Sullivan, 5 IBLA 275 (1972)

Cornelius D. & Josie L. Sullivan v. U.S., Ct. Cl. No. 193-69. Dismissed, Oct. 27, 1972.

U.S. v. Frank R. Sullivan, 9 IBLA 278 (1973)

Robert L. Mendenhall v. U.S., Cecil D. Andrus, Secretary of the Interior & Edward F. Spange, State Dir. Nevada, BLM, Civil No. CV-R-80-146ECR, D. Nev. Suit pending.

U.S. v. Elmer H. Swanson, 81 I.D. 14 (1974), 34 IBLA 25 (1978)

Elmer H. Swanson v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 4-74-10, D. Idaho. Dismissed without prejudice, Dec. 23, 1975 (opinion).

Elmer H. Swanson & Livingston Silver, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV-78-4045, D. Idaho. Suit pending.

U.S. v. Tempest Mining Co., 40 IBLA 297 (1979)

Tempest Mining Corp. v. U.S., Dept. of Interior, Bureau of Land Management & Secretary of the Interior, Civil No. CIV 79-1103, D. Idaho. Suit pending.

U.S. v. C. Fred Underwood et al., 22 IBLA 62 (1975), (amended decision) 22 IBLA 70 (1975)

C. Fred Underwood, Chloe Underwood & Jack D. Canon v. The Secretary of the Interior, Civil No. S-76-91 PCW, E.D. Cal. Judgment for defendant, June 23, 1977; aff'd, Mar. 19, 1980.

U.S. v. United States Pumice Co., 37 IBLA 153 (1978); Supplemental Order of Intervention, June 1, 1979, Clarification of Order of June 1, 1979, dated July 18, 1979

The Wilderness Society, McKenzie Flyfishers, The Obsidians, et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-0296. Dismissed, May 30, 1979.

U.S. v. U.S. Silica Corp. et al., A-30400 (Aug. 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Judgment for defendant, Sept. 26, 1969; no appeal.

U.S. v. Utah International, Inc., 45 IBLA 73 (1980)

Utah International v. Cecil Andrus, Secretary of the Interior, Civil No. C80-068, D. Wyo. Suit pending.

U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

Alfred N. Verrue v. U.S. et al., Civil No. 6898 Phx., D. Ariz. Rev'd & remanded, Dec. 29, 1970; aff'd, 457 F.2d 1202 (9th Cir. 1971); no petition.

U.S. v. Kenneth O. Watkins & Harold E. L. Barton, A-29862 (Apr. 24, 1966), A-30659 (Oct. 19, 1967)

Harold E. L. Barton v. Stewart L. Udall, Secretary of the Interior & U.S., Civil No. 69-26, D. Ore. Judgment for defendant, Mar. 17, 1971; aff'd, 498 F.2d 288 (9th Cir. 1974); cert. denied, Nov. 18, 1974.

U.S. v. H. B. Webb, 1 IBLA 67 (1970)

U.S. v. Hiram Webb, Civil No. ____ D. Ariz. Judgment for plaintiff, ____; vacated & remanded, Sept. 8, 1981.

U.S. v. Oscar W. Weiss et al., A-30809 (Sept. 14, 1967), 15 IBLA 198 (1974)

Oscar W. Weiss v. Stewart L. Udall, Civil No. C-882, D. Colo. Remanded, Jan. 2, 1969.

U.S. v. Thomas C. Wells, A-30805 (Jan. 8, 1968), A-30805 (Supp.) (Apr. 25, 1969), A-30805 (Supp. II) (Nov. 17, 1969)

Thomas C. Wells v. Udall, Civil No. S-693, E.D. Cal. Remanded to Secretary, Dec. 12, 1968; remanded to Bureau of Land Mgmt. Time extended to Nov. 1, 1970, to comply with requirements of Supp. II. Judgment for defendant, Dec. 17, 1970.

U.S. v. Vernon O. & Ina C. White, 72 I.D. 552 (1965)

Vernon O. & Ina C. White v. Stewart L. Udall, Civil No. 1-65-122, D. Idaho. Judgment for defendant, Jan. 6, 1967; aff'd, 404 F.2d 334 (9th Cir. 1968); no petition.

U.S. v. Milton Wichner, 35 IBLA 240 (1978)

Milton Wichner v. Cecil D. Andrus, Secretary of the Interior, Bob Bergland, Secretary of Agriculture, Frank Gregg, Director, BLM, Edward L. Hasteley, State Dir. (California), BLM, William T. Dresser, Forest Supervisor of the Angeles National Forest, & U.S., Civil No. CV 78-2804, C.D. Cal. Suit pending.

U.S. v. Frank W. Winegar et al., 81 I.D. 370 (1974)

Shell Oil Co. & D. A. Shale, Inc. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-F-739, D. Colo. Judgment for plaintiff, Jan. 17, 1977; aff'd, Jan. 25, 1979.

U.S. v. Rodney Wood et al., A-30697 (May 31, 1967)

Rodney Wood et al. v. Stewart L. Udall, Secretary of the Interior & Orville L. Freeman, Secretary of Agriculture, Civil No. S-436, N.D. Cal. Dismissed without prejudice, Nov. 7, 1967; amended complaint filed; judgment for defendant, Mar. 27, 1969; no appeal.

U.S. v. Jon Zimmers & Claire Kelly, 44 IBLA 142 (1979)

Jon F. Zimmers v. Cecil D. Andrus, Secretary of the Interior, Civil No. S-80-140 LKK, E.D. Cal. Suit pending.

U.S. v. Elodymae Zwang, U.S. v. Darrell Zwang,
26 IBLA 41; 83 I.D. 280 (1976)

Darrell & Elodymae Zwang v. Cecil Andrus,
Secretary of the Interior, Civil No. 77-1431
R, D. Cal. Judgment for plaintiff, Aug. 20,
1979.

U.S. v. Merle I. Zweifel et al., 16 IBLA 74 (1974)

Walter H. Burkhardt et al. v. Rogers C. B.
Morton, Secretary of the Interior & The Board
of Land Appeals, Civil No. C74-152, D. Wyo.
Judgment for defendant, Nov. 7, 1975.

Consolidated with A. F. Anderson et al. v.
Rogers C. B. Morton et al., Civil No. C74-151,
D. Wyo. for purposes of appeal by order of
Nov. 19, 1975. Dismissed, Nov. 28, 1975.

U.S. v. Merle I. Zweifel et al., 80 I.D. 323 (1973)

Merle I. Zweifel et al. v. U.S., Civil No.
C-5276, D. Colo. Dismissed without prejudice,
Oct. 31, 1973.

Kenneth Roberts et al. v. Rogers C. B. Morton
& The Interior Board of Land Appeals, Civil
No. C-5308, D. Colo. Dismissed with prejudice,
389 F. Supp. 87 (1975); aff'd, 549 F.2d 158
(10th Cir. 1977).

United Technical Industries, Inc., A-29406 (Apr. 24,
1963)

Jay Nielson v. J. E. Keough et al., Civil No.
C-158-63, D. Utah. Dismissed, July 13, 1964
(opinion); no appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584
(Sept. 21, 1966)

Paul E. Unruh v. Udall et al., Civil No.
1894-N, D. Nev. Judgment for defendant
June 14, 1967; no appeal.

Utah Power & Light Co., 4 IBLA 62 (1971)

Utah Power & Light Co. v. Rogers C. B. Morton
et al., Civil No. C-5-72, D. Utah. Dismissed
with prejudice, Nov. 3, 1972; aff'd, Sept. 20,
1974.

Utah Power & Light Co., 14 IBLA 372 (1974)

Utah Power & Light Co. v. Thomas S. Kleppe,
in his official capacity as Secretary of the
Interior, Civil No. C-76-136, D. Utah. Suit
pending.

Henrietta Roberts Vaden, IBLA 74-1, dismissed by
order, Aug. 8, 1973, Petition for Reconsideration
denied by order, May 29, 1975

Henrietta Roberts Vaden, a/k/a Henrietta R.
Vaden v. Thomas S. Kleppe, Secretary of the
Interior et al., Civil No. A75-223 CIV, D.
Alaska. Stipulated dismissal, Mar. 31, 1976.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil No.
1744-56. Dismissed by stipulation, Apr. 18,
1957; no appeal.

Estate of Cecelia Smith Vergote (Borger), Morris A.
(K.) Charles & Caroline J. Charles (Brendale),
5 IBIA 96; 83 I.D. 209 (1976)

Confederated Tribes & Bands of the Yakima
Indian Nation v. Thomas Kleppe, Secretary of
the Interior & Phillip Brendale, Civil No.
C-76-199, E.D. Wash. Suit pending.

Estate of Florence Bluesky Vessell (Unallotted
Lac Courte Oreilles Chippewa of Wisconsin),
1 IBIA 312, 79 I.D. 615 (1972)

Constance Jean Hollen Eskra v. Rogers C. B.
Morton et al., Civil No. 72-C-428, D. Wis.
Dismissed, 380 F. Supp. 205 (1974); rev'd,
Sept. 29, 1975; no petition.

Virginia Iron, Coal & Coke Co., 2 IBSMA 165, 87 I.D.
327 (1980)

Virginia Iron, Coal & Coke Co. v. Cecil D.
Andrus, Secretary of the Interior, Civil No.
80-0245-B, W.D. Va. Suit pending.

Burt A. Wackerli et al., 73 I.D. 280 (1966)

Burt & Lueva G. Wackerli, et al. v. Stewart L.
Udall et al., Civil No. 1-66-92, D. Idaho.
Amended complaint filed, Mar. 17, 1971; judg-
ment for plaintiff, Feb. 28, 1975.

Estate of Amelia Keyes Abbot Viramontes Walker,
IA-1339 (Apr. 5, 1966)

Earlene Ida Abbott Simons v. Udall et al.,
Civil No. 2640, D. Mont. Judgment for defen-
dant, 276 F. Supp. 75 (1967); no appeal.

Jack A. Walker, A-30492 (Apr. 28, 1966)

Jack A. Walker v. U.S. & Udall, Civil No.
1-66-80, D. Idaho. Judgment for plaintiff,
July 3, 1967; rev'd, 409 F.2d 477 (9th Cir.
1969); no petition.

Estate of Milward Wallace Ward, 82 I.D. 341 (1975)

Alfred Ward, Irene Ward Wise, & Elizabeth
Collins v. Kent Frizzell, Acting Secretary
of the Interior, et al., Civil No. C75-175,
D. Wyo. Dismissed, Jan. 1, 1976.

Wasatch Development Co. et al., A-28674 (May 16,
1963)

Joseph B. Umpleby et al. v. Stewart L. Udall,
Civil No. 8156, D. Colo. Judgment for defen-
dant, 285 F. Supp. 25 (1968); no appeal.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. U.S., Civil No.
278-59-PH, S.D. Cal. Judgment for plaintiff,
Oct. 26, 1959; satisfaction of judgment entered,
Feb. 9, 1960.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83;
78 I.D. 179 (1971)

William T. Shaw, Jr., et al. v. Rogers C. B.
Morton et al., Civil No. 974, D. Mont. Dis-
missed, July 6, 1973 (opinion); no appeal.

Estate of Wahwersee R. Werqueyah, 5 IBIA 169 (1976)

Mattie Wahwersee v. Thomas Kleppe, Secretary of Interior, Civil No. CIV-76-0845-E, W.D. Okla. Suit pending.

Lucille S. West, Duncan Miller, et al., A-29242 et al. (Feb. 25, 1963), Duncan Miller, A-29231 (Feb. 5, 1963)

Cecil H. Phillips et al. v. Stewart L. Udall, Civil No. 847-63. Dismissed on behalf of all except Lucille S. West; judgment for defendant, Feb. 25, 1964; no appeal.

Western Nuclear, Inc., 35 IBLA 146; 85 I.D. 129 (1978)

Western Nuclear, Inc., a Del. Corp., authorized & doing business in the State of Wyo. v. Cecil Andrus, Secretary of the Interior, & U.S., Civil No. C78-129, D. Wyo. Judgment for defendant, 475 F. Supp. 654 (D. Wyo. 1979); appeal filed Nov. 28, 1979.

Minnie F. Wharton, John W. Wharton, Ruth Wharton James, Carroll Wharton, Iris Wharton Bartyl, Marvin Wharton, Thomas Wharton, Betty Wharton Zink, Faye Wharton Pamperien & Samuel Wharton, 4 IBLA 287; 79 I.D. 6 (1972)

U.S. & Rogers C. B. Morton, Secretary of the Interior v. Minnie E. & John W. Wharton, Ruth Wharton James, Carroll Wharton, Iris Wharton Bartyle, Marvin Wharton, Thomas Wharton, Betty Wharton Zink, Faye Wharton Pamperien & Samuel Wharton, Civil No. 70-106, D. Ore. Judgment for defendant, Feb. 26, 1973; reconsideration denied, June 4, 1973; rev'd & remanded, 514 F.2d 406 (9th Cir. 1975); no petition.

Richard Wheeler, Jr., 34 IBLA 359 (1978)

Richard Wheeler, Jr. v. The Dept. of Interior & Cecil Andrus, Secretary of the Interior, Civil No. CIV78-0750 T, W.D. Okla. Suit pending.

Estate of John P. Whitetail, IA-T-23 (Apr. 17, 1970)

Doris Ann Whitetail Parker et al. v. John Pappan et al., Civil No. 70-C-373, D. Okla. Dismissed, July 10, 1973; motion for new trial & reconsideration overruled, Aug. 17, 1973; no appeal.

Estate of Hiemstennie (Maggie) Whiz Abbott, 2 IBIA 53, 80 I.D. 617 (1973); 4 IBIA 12, 82 I.D. 169 (1975); reconsideration denied, 4 IBIA 79 (1975)

Doris Whiz Burkybile v. Alvis Smith, Sr., as Guardian Ad Litem for Zelma, Vernon, Kenneth, Mona & Joseph Smith, Minors, et al., Civil No. C-75-190, E.D. Wash. Judgment for defendant, Jan. 21, 1977; no appeal.

Buck Willcoxson, A-27402, A-27403 (Dec. 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil No. 3596, D.N.M. Motion of plaintiff to dismiss case without prejudice granted, Dec. 10, 1957.

Buck Willcoxson, A-27402, A-27403 (Dec. 17, 1956) (Continued)

Buck Willcoxson v. Stewart L. Udall, Civil No. 2029-58.

U.S. v. Buck Willcoxson et al., Civil No. 1492-59.

Buck Willcoxson v. U.S., Civil No. 972-59.

Actions consolidated. Judgment for defendant, plaintiff & defendant, respectively, Aug. 3, 1961; aff'd, 313 F.2d 884 (1963); cert. denied, 373 U.S. 932 (1963).

William A. Smith Contracting Co., IBCA-83 (July 16, 1959)

William A. Smith Contracting Co. et al. v. U.S., Ct. Cl. No. 264-57. Judgment for plaintiff, 292 F.2d 847 (1961); no appeal.

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William F. Klingensmith, Inc. v. U.S., Civil No. 1287-71.

William F. Klingensmith, Inc. v. U.S., Civil No. 1288-71.

Actions consolidated and transferred to Court of Claims, Jan. 24, 1972; Ct. Cl. No. 28-72. Dismissed, Nov. 23, 1973.

David L. Williams, A-29858 (Feb. 12, 1963)

Richard L. & Jean S. Hatter, Gary Linn Dusenberry, Jere D. Anderson, & Henry P. Carley d/b/a Chad Enterprise, a Joint Venture v. U.S., Civil No. S74-205, E.D. Cal. Judgment for defendant, Aug. 8, 1975.

Wilson Farms Coal Co., 2 IBSMA 118, 87 I.D. 245 (1980)

Wilson Farms Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 80-150, E.D. Ky. Suit pending.

Harry H. Wilson, 35 IBLA 349 (1978)

Harry H. Wilson v. U.S., & Cecil Andrus, Secretary of the Interior, Civil No. A78-225 CIV, D. Alaska. Suit pending.

Estate of Louise Wilson, IA-1380 (Mar. 1, 1966)

Charles W. Heffelman v. Stewart L. Udall, Civil No. 6402, N.D. Okla. Dismissed, June 16, 1966; aff'd, 378 F.2d 109 (10th Cir. 1967); cert. denied, 389 U.S. 926 (1967).

Frank Winegar, Shell Oil Co. & D. A. Shale Inc., 74 I.D. 161 (1967)

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Joseph A. Winkler, 24 IBLA 380 (1976)

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Appeal of Wisenak, Inc., 1 ANCAB 157; 83 I.D. 496 (1976)

Wisenak, Inc., an Alaska Corp. v. Thomas S. Kleppe, Individually & as Secretary of the Interior & the U.S., Civil No. F76-38 Civ., D. Alaska. Remanded to Department for further proceedings, July 9, 1979.

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W. L. Ridge v. U.S., Ct. Cl. No. 301-60. Suit dismissed, Oct. 1, 1963.

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Geosearch, Inc. & Herbert Maslan v. James G. Watt et al., Civil No. C-81-276, D. Wyo. Suit pending.

Burton D. Morgan, Fred L. Engle, d/b/a/ Resource Service Co. v. James G. Watt et al., Civil No. C-81-279, D. Wyo. Suit pending.

Woods Petroleum Corp. et al., William Ralph Stroble et al., 12 IBLA 247 (1973)

Duvels, Inc., West Park International, Inc., George H. Frandsen, Paul P. Dyreng, R. Morgan Dyreng, Stephen B. Nadauld, John B. Peacock & Lori M. Free v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-175, D. Utah. Judgment for defendant, July 6, 1976; appeal filed, Feb. 3, 1976.

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Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah, Deceased, Comanche Enrolled Restricted Indian No. 1927 v. Jane Asenap, Wilfred Tabbytite, J. R. Graves, Examiner of Inheritance, Bureau of Indian Affairs, Dept. of the Interior & Earl R. Wiseman, District Dir. of Internal Revenue, Civil No. 8281, W.D. Okla. Dismissed as to the Examiner of Inheritance; plaintiff dismissed suit without prejudice as to the other defendants.

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Haruyuki Yamane et al., 19 IBLA 320 (1975)

C. Burglin, Dennis Krize, Mark & Kenneth Ringstad, Lloyd Burgess, M. E. Anderson, William Ackess, John J. & William D. Sexton, J. R. & June L. S. Beck, Alexander Miller, Wally Burnett, Sr., Wallace & Donald Burnett, Earnest Carter, Mary L. Carie & Harayuki Yamane v. The Secretary of the Interior, Stanley Hathaway, et al., Civil No. A75-113 CIV. D. Alaska. Consolidated with Civil No. A75-232. Judgment for defendant, Dec. 29, 1976; aff'd, Aug. 18, 1978.

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Young Associates, Inc. v. U.S., Ct. Cl. 787-71. Judgment for defendant, Jan. 18, 1973.

Estate of Asmakt Yumpquitat (Millie Sampson), 8 IBIA 1 (1980)

Anita Sampson Lewis v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-80-117, E.D. Wash. Suit pending.

Zapata Coal Corp., 2 IBSMA 9, 87 I.D. 11 (1980)

Zapata Coal Corp. v. Cecil D. Andrus, Civil No. 80-2058, S.W. W. Va. Suit pending.

George W. Zarak et al., Cardinal Petroleum Co., 4 IBLA 82 (1971)

Tony Rice, George W. Zarak, Arlene Zarak, William J. Zarak, Jr. & Darlene Zarak v. Rogers C. B. Morton et al., Civil No. 1127, D.N.D. Judgment for defendant, 348 F. Supp. 254 (1972); aff'd, 479 F.2d 58 (8th Cir. 1973); cert. denied, 414 U.S. 858 (1973).

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Zeigler Coal Co., 82 I.D. 36 (1975)

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Harry A. Zuckerman, et al., 41 IBLA 372 (1979)

Harry Zuckerman & Mark M. Collins v.
Benjamin Civiletti, Attorney General &
R. E. Thompson, U.S. Attorney on behalf
of Cecil Andrus, Secretary of the Interior,
Civil No. CIV-79-815-M, D.N.M. Suit
pending.

Elodymae Zwang et al., A-30201 (Feb. 3, 1965)

Darrell & Elodymae Zwang v. Stewart L. Udall,
Civil No. 65-716-EC, S.D. Cal. Judgment for
defendant, Feb. 23, 1966; aff'd, 371 F.2d 634
(9th Cir. 1967); no petition.

* * * * *

(A) UNITED STATES STATUTES

1 STAT:

page 96 -----58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)

2 STAT:

page 716 -----57 IBLA 167, 88 I.D. 772 (1981)

4 STAT:

page 364 -----59 IBLA 1, 88 I.D. 925 (1981)
730 -----9 IBIA 36 (July 10, 1981)

7 STAT:

page 333 -----55 IBLA 51 (May 29, 1981)
478 -----55 IBLA 51 (May 29, 1981)

9 STAT:

page 37 -----59 IBLA 1, 88 I.D. 925 (1981)
146 -----59 IBLA 1, 88 I.D. 925 (1981)
395 -----57 IBLA 167, 88 I.D. 772 (1981)

10 STAT:

page 244 -----58 IBLA 213 (Sept. 29, 1981)
604 -----8 IBIA 218, 88 I.D. 261 (1981)

11 STAT:

page 385 -----58 IBLA 213 (Sept. 29, 1981)

12 STAT:

page 1951 -----8 IBIA 312 (May 29, 1981)

13 STAT:

page 238 -----M-36925, 88 I.D. 699 (1981)
343 -----59 IBLA 1, 88 I.D. 925 (1981)
529 -----59 IBLA 1, 88 I.D. 925 (1981)

14 STAT:

page 239 -----61 IBLA 8 (Dec. 29, 1981)
251 -----59 IBLA 1, 88 I.D. 925 (1981)
253 -----5 ANCAB 307, 88 I.D. 629
(1981)
M-36914 (Supp.), 88 I.D. 253
(1981)
M-36914 (Supp. I), 88 I.D. 1055
(1981)

16 STAT:

page 84 -----61 IBLA 8 (Dec. 29, 1981)
217 -----59 IBLA 1, 88 I.D. 925 (1981)
218 -----M-36914 (Supp.), 88 I.D. 253
(1981)
M-36914 (Supp. I), 88 I.D. 1055
(1981)
570 -----9 IBIA 141 (Dec. 22, 1981)
573 -----54 IBLA 174 (Apr. 21, 1981)

17 STAT:

page 91 -----56 IBLA 78, 88 I.D. 643 (1981)
59 IBLA 1, 88 I.D. 925 (1981)
61 IBLA 8 (Dec. 29, 1981)
92 -----6 ANCAB 65, 88 I.D. 760 (1981)
59 IBLA 1, 88 I.D. 925 (1981)
94 -----59 IBLA 1, 88 I.D. 925 (1981)
96 -----56 IBLA 78, 88 I.D. 643 (1981)
607 -----M-36893 (Supp. II), 88 I.D. 247
(1981)

18 STAT:

page 420 -----58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)

20 STAT:

page 89 -----59 IBLA 1, 88 I.D. 925 (1981)

23 STAT:

page 24 -----53 IBLA 208, 88 I.D. 373 (1981)
26 -----53 IBLA 208, 88 I.D. 373 (1981)

24 STAT:

page 388 -----8 IBIA 295, 88 I.D. 561 (1981)
9 IBIA 82, 88 I.D. 987 (1981)
53 IBLA 208, 88 I.D. 373 (1981)
58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)
389 -----6 ANCAB 17, 88 I.D. 718 (1981)
52 IBLA 52 (Jan. 6, 1981)

26 STAT:

page 391 -----5 ANCAB 354 (July 24, 1981)
794 -----9 IBIA 52, 88 I.D. 676 (1981)
58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)
795 -----9 IBIA 52, 88 I.D. 676 (1981)
53 IBLA 208, 88 I.D. 373 (1981)
796 -----58 IBLA 213 (Sept. 29, 1981)
1095 -----53 IBLA 208, 88 I.D. 373 (1981)
1096 -----55 IBLA 83 (June 1, 1981)
1097 -----57 IBLA 95 (Aug. 25, 1981)

27 STAT:

page 348 -----59 IBLA 1, 88 I.D. 925 (1981)

28 STAT:

page 107 -----52 IBLA 390 (Feb. 24, 1981)
509 -----M-36925, 88 I.D. 699 (1981)

29 STAT:

page 526 -----58 IBLA 390, 88 I.D. 918 (1981)

30 STAT:

page 413 -----57 IBLA 95 (Aug. 25, 1981)

31 STAT:

page 321 -----53 IBLA 208, 88 I.D. 373 (1981)
330 -----53 IBLA 208, 88 I.D. 373 (1981)
790 -----56 IBLA 139 (July 20, 1981)

32 STAT:

page 388 -----52 IBLA 56 (Jan. 6, 1981)
53 IBLA 42 (Feb. 26, 1981)
55 IBLA 42 (May 28, 1981)

34 STAT:

page 197 -----6 ANCAB 17, 88 I.D. 718 (1981)
9 IBIA 126, 88 I.D. 1020 (1981)
53 IBLA 168 (Mar. 12, 1981)
53 IBLA 208, 88 I.D. 373 (1981)
54 IBLA 306 (Apr. 29, 1981)
54 IBLA 346 (May 12, 1981)
55 IBLA 305 (June 25, 1981)
56 IBLA 69 (July 10, 1981)
59 IBLA 345 (Nov. 5, 1981)

34 STAT: (Continued)

59 IBLA 361 (Nov. 9, 1981)
 59 IBLA 384 (Nov. 9, 1981)
 60 IBLA 14 (Nov. 16, 1981)
 60 IBLA 101 (Nov. 19, 1981)
 60 IBLA 214 (Nov. 27, 1981)
 60 IBLA 252 (Dec. 4, 1981)
 60 IBLA 394 (Dec. 23, 1981)
 60 IBLA 399 (Dec. 28, 1981)
 61 IBLA 1 (Dec. 28, 1981)
 1015 -----57 IBLA 319 (Sept. 1, 1981)
 1024 -----57 IBLA 319 (Sept. 1, 1981)
 3218 -----52 IBLA 141 (Jan. 16, 1981)

35 STAT:

page 48 ----- M-36942, 88 I.D. 1090 (1981)

36 STAT:

page 363 ----- 6 ANCAB 17, 88 I.D. 718 (1981)
 847 -----52 IBLA 87, 88 I.D. 31 (1981)
 53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 23 (May 26, 1981)
 58 IBLA 188 (Sept. 28, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 847-848 -----55 IBLA 20 (May 26, 1981)
 855 -----58 IBLA 21 (Sept. 16, 1981)
 855 et seq. --59 IBLA 170 (Oct. 26, 1981)
 962 -----52 IBLA 302 (Feb. 10, 1981)
 1345 ----- 8 IBIA 295, 88 I.D. 561 (1981)

37 STAT:

page 497 -----52 IBLA 87, 88 I.D. 31 (1981)
 53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 20 (May 26, 1981)
 55 IBLA 23 (May 26, 1981)
 58 IBLA 260 (Oct. 6, 1981)

38 STAT:

page 305 ----- 5 ANCAB 354 (July 24, 1981)
 509 -----57 IBLA 252 (Aug. 28, 1981)

39 STAT:

page 218 -----61 IBLA 8 (Dec. 29, 1981)
 756 ----- M-36925, 88 I.D. 699 (1981)
 798 ----- M-36925, 88 I.D. 699 (1981)
 1134 -----54 IBLA 162 (Apr. 21, 1981)
 1150 -----52 IBLA 302 (Feb. 10, 1981)
 54 IBLA 162 (Apr. 21, 1981)
 1702 ----- M-36936, 88 I.D. 586 (1981)

40 STAT:

page 561 ----- M-36933, 88 I.D. 333 (1981)
 573 ----- M-36933, 88 I.D. 333 (1981)
 593 -----61 IBLA 8 (Dec. 29, 1981)
 1179 -----61 IBLA 8 (Dec. 29, 1981)

41 STAT:

page 24 -----53 IBLA 168 (Mar. 12, 1981)
 366-367 ----- M-36942, 88 I.D. 1090 (1981)
 437 -----52 IBLA 278 (Feb. 6, 1981)
 58 IBLA 390, 88 I.D. 918 (1981)
 M-36893 (Supp. II), 88 I.D. 247 (1981)
 443 ----- M-36939, 88 I.D. 1003 (1981)

42 STAT:

page 415 -----55 IBLA 305 (June 25, 1981)

43 STAT:

page 253 -----58 IBLA 21 (Sept. 16, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 654 -----61 IBLA 8 (Dec. 29, 1981)
 702 ----- 4 OHA 204 (Oct. 26, 1981)
 1985 -----56 IBLA 43 (July 8, 1981)

44 STAT:

page 1026 -----59 IBLA 1, 88 I.D. 925 (1981)
 1364 -----57 IBLA 95 (Aug. 25, 1981)

45 STAT:

page 160 -----56 IBLA 282 (July 28, 1981)
 882 ----- M-36942, 88 I.D. 1090 (1981)
 956 -----59 IBLA 1, 88 I.D. 925 (1981)
 1069 -----52 IBLA 248 (Feb. 6, 1981)

46 STAT:

page 590 ----- M-36925, 88 I.D. 699 (1981)
 701 ----- M-36925, 88 I.D. 699 (1981)
 822 ----- M-36942, 88 I.D. 1090 (1981)
 1494 ----- 8 IBIA 254, 88 I.D. 410 (1981)

48 STAT:

page 195 -----54 IBLA 162 (Apr. 21, 1981)
 200 -----54 IBLA 162 (Apr. 21, 1981)
 202 -----54 IBLA 162 (Apr. 21, 1981)
 205 -----54 IBLA 162 (Apr. 21, 1981)
 797 ----- 8 IBIA 218, 88 I.D. 261 (1981)
 809 -----57 IBLA 95 (Aug. 25, 1981)
 984 ----- 8 IBIA 254, 88 I.D. 410 (1981)
 8 IBIA 283 (May 15, 1981)
 8 IBIA 295, 88 I.D. 561 (1981)
 9 IBIA 36 (July 10, 1981)
 9 IBIA 82, 88 I.D. 987 (1981)
 9 IBIA 141 (Dec. 22, 1981)
 53 IBLA 208, 88 I.D. 373 (1981)
 985 ----- 9 IBIA 43 (July 27, 1981)
 9 IBIA 82, 88 I.D. 987 (1981)
 987 ----- 9 IBIA 141 (Dec. 22, 1981)
 988 -----53 IBLA 208, 88 I.D. 373 (1981)
 1269 -----53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 153 (Mar. 12, 1981)
 53 IBLA 208, 88 I.D. 373 (1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 23 (May 26, 1981)
 55 IBLA 131 (June 3, 1981)
 55 IBLA 332 (June 26, 1981)
 58 IBLA 94 (Sept. 24, 1981)
 58 IBLA 98 (Sept. 24, 1981)
 58 IBLA 103 (Sept. 24, 1981)
 58 IBLA 108 (Sept. 24, 1981)
 58 IBLA 202 (Sept. 29, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 59 IBLA 182 (Oct. 27, 1981)
 1272 -----52 IBLA 156, 88 I.D. 232 (1981)
 58 IBLA 213 (Sept. 29, 1981)
 61 IBLA 8 (Dec. 29, 1981)

49 STAT:

page 115 -----54 IBLA 162 (Apr. 21, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 118 -----54 IBLA 162 (Apr. 21, 1981)
 674 -----52 IBLA 60, 88 I.D. 24 (1981)
 676 -----52 IBLA 60, 88 I.D. 24 (1981)
 750 -----54 IBLA 162 (Apr. 21, 1981)
 781 -----54 IBLA 162 (Apr. 21, 1981)
 1976 -----53 IBLA 153 (Mar. 12, 1981)

50 STAT:

page 522 -----54 IBLA 162 (Apr. 21, 1981)

United States Statutes

50 STAT: (Continued)

page 525 -----54 IBLA 162 (Apr. 21, 1981)
 530 -----54 IBLA 162 (Apr. 21, 1981)
 874 -----54 IBLA 309 (Apr. 30, 1981)
 60 IBLA 1 (Nov. 12, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 1311 -----M-36936, 88 I.D. 586 (1981)
 1856 -----53 IBLA 289 (Mar. 24, 1981)

52 STAT:

page 609 -----57 IBLA 95 (Aug. 25, 1981)

53 STAT:

page 753 -----60 IBLA 1 (Nov. 12, 1981)
 851 -----M-36933, 88 I.D. 333 (1981)
 1144 -----61 IBLA 8 (Dec. 29, 1981)
 1192 -----4 OHA 204 (Oct. 26, 1981)

54 STAT:

page 250 -----M-36936, 88 I.D. 586 (1981)
 746 -----8 IBIA 254, 88 I.D. 410 (1981)
 954 -----54 IBLA 174 (Apr. 21, 1981)
 61 IBLA 8 (Dec. 29, 1981)

55 STAT:

page 1647 -----61 IBLA 68 (Dec. 31, 1981)

56 STAT:

page 725 -----54 IBLA 162 (Apr. 21, 1981)

57 STAT:

page 593 -----52 IBLA 60, 88 I.D. 24 (1981)

60 STAT:

page 956 -----52 IBLA 60, 88 I.D. 24 (1981)
 969 -----8 IBIA 312 (May 29, 1981)
 1099 -----52 IBLA 302 (Feb. 10, 1981)
 58 IBLA 312 (Oct. 16, 1981)

61 STAT:

page 416 -----8 IBIA 295, 88 I.D. 561 (1981)
 681 -----54 IBLA 309 (Apr. 30, 1981)
 913 -----58 IBLA 175, 88 I.D. 879 (1981)
 61 IBLA 8 (Dec. 29, 1981)

62 STAT:

page 17 -----9 IBIA 126, 88 I.D. 1020 (1981)
 18 -----9 IBIA 126, 88 I.D. 1020 (1981)
 162 -----61 IBLA 8 (Dec. 29, 1981)

63 STAT:

page 214 -----61 IBLA 39 (Dec. 31, 1981)
 383 -----IBCA-1434-2-81, 88 I.D. 979
 (1981)
 393 -----IBCA-1434-2-81, 88 I.D. 979
 (1981)

64 STAT:

page 94 -----53 IBLA 208, 88 I.D. 373 (1981)
 95 -----53 IBLA 208, 88 I.D. 373 (1981)
 769 -----54 IBLA 137 (Apr. 17, 1981)

66 STAT:

page c31 -----61 IBLA 68 (Dec. 31, 1981)

67 STAT:

page 29 -----5 ANCAB 324, 88 I.D. 636 (1981)
 539 -----59 IBLA 1, 88 I.D. 925 (1981)
 588 -----9 IBIA 25, 88 I.D. 619 (1981)

68 STAT:

page 250 -----9 IBIA 141 (Dec. 22, 1981)
 252 -----9 IBIA 141 (Dec. 22, 1981)
 585 -----52 IBLA 60, 88 I.D. 24 (1981)
 708 -----59 IBLA 1, 88 I.D. 925 (1981)
 718 -----9 IBIA 25, 88 I.D. 619 (1981)
 9 IBIA 76 (Sept. 29, 1981)

69 STAT:

page 67 -----52 IBLA 164 (Jan. 21, 1981)
 57 IBLA 104 (Aug. 25, 1981)
 58 IBLA 282 (Oct. 8, 1981)
 367 -----55 IBLA 340 (June 26, 1981)
 56 IBLA 61 (July 10, 1981)
 368 -----55 IBLA 324 (June 26, 1981)
 369 -----59 IBLA 1, 88 I.D. 925 (1981)
 679 -----59 IBLA 1, 88 I.D. 925 (1981)
 682 -----52 IBLA 56 (Jan. 6, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)

70 STAT:

page 954 -----53 IBLA 208, 88 I.D. 373 (1981)
 54 IBLA 346 (May 12, 1981)
 55 IBLA 305 (June 25, 1981)
 60 IBLA 14 (Nov. 16, 1981)

72 STAT:

page 31 -----53 IBLA 23 (Feb. 26, 1981)
 58 IBLA 199 (Sept. 29, 1981)
 59 IBLA 182 (Oct. 27, 1981)
 121 -----9 IBIA 36 (July 10, 1981)
 339 -----5 ANCAB 324, 88 I.D. 636 (1981)
 6 ANCAB 95, 88 I.D. 886 (1981)
 6 ANCAB 129 (Oct. 22, 1981)
 6 ANCAB 157, 88 I.D. 1028 (1981)
 54 IBLA 346 (May 12, 1981)
 59 IBLA 364 (Nov. 9, 1981)
 339-343 -----53 IBLA 182 (Mar. 17, 1981)
 340 -----6 ANCAB 157, 88 I.D. 1028 (1981)
 341 -----6 ANCAB 65, 88 I.D. 760 (1981)
 607 -----57 IBLA 293 (Aug. 31, 1981)
 1701 -----52 IBLA 1 (Jan. 5, 1981)
 52 IBLA 137 (Jan. 16, 1981)
 53 IBLA 377 (Mar. 31, 1981)
 56 IBLA 112 (July 16, 1981)
 57 IBLA 76 (Aug. 21, 1981)
 60 IBLA 29 (Nov. 16, 1981)

73 STAT:

page 141 -----54 IBLA 346 (May 12, 1981)
 427 -----8 IBIA 295, 88 I.D. 561 (1981)

74 STAT:

page 7 -----M-36893 (Supp. II), 88 I.D. 247
 (1981)
 83 -----57 IBLA 146 (Aug. 25, 1981)
 506 -----61 IBLA 8 (Dec. 29, 1981)
 506-507 -----M-36942, 88 I.D. 1090 (1981)

75 STAT:

page 780 -----4 OHA 211 (Nov. 24, 1981)

76 STAT:

page 804 -----53 IBLA 23 (Feb. 26, 1981)

76 STAT: (Continued)

58 IBLA 199 (Sept. 29, 1981)
 59 IBLA 182 (Oct. 27, 1981)
 1127 -----53 IBLA 125 (Mar. 5, 1981)
 1246 -----M-36936, 88 I.D. 586 (1981)

77 STAT:

page 223 ----- 6 ANCAB 65, 88 I.D. 760 (1981)

78 STAT:

page 890 -----58 IBLA 213 (Sept. 29, 1981)
 59 IBLA 291 (Oct. 30, 1981)
 60 IBLA 305 (Dec. 18, 1981)
 894 -----M-36937, 88 I.D. 813 (1981)

79 STAT:

page 213 -----M-36931, 88 I.D. 228 (1981)
 897 ----- 9 IBIA 25, 88 I.D. 619 (1981)
 9 IBIA 76 (Sept. 29, 1981)
 903 ----- 3 IBSMA 383, 88 I.D. 1122 (1981)

80 STAT:

page 378 ----- 9 IBIA 52, 88 I.D. 676 (1981)
 386 ----- 9 IBIA 52, 88 I.D. 676 (1981)
 387 ----- 9 IBIA 52, 88 I.D. 676 (1981)
 484 ----- 4 OHA 140 (Apr. 6, 1981)

82 STAT:

page 860 ----- 9 IBIA 25, 88 I.D. 619 (1981)

83 STAT:

page 922 -----53 IBLA 289 (Mar. 24, 1981)

84 STAT:

page 253 ----- 9 IBIA 25, 88 I.D. 619 (1981)
 1874 ----- 8 IBIA 312 (May 29, 1981)
 1894 ----- 4 OHA 131 (Mar. 12, 1981)

85 STAT:

page 97 ----- IBCA-1280-7-79, 88 I.D. 1065
 (1981)
 688 ----- 5 ANCAB 147, 88 I.D. 14 (1981)
 5 ANCAB 174, 88 I.D. 352 (1981)
 5 ANCAB 197, 88 I.D. 442 (1981)
 5 ANCAB 212 (Apr. 15, 1981)
 5 ANCAB 220 (Apr. 17, 1981)
 5 ANCAB 224, 88 I.D. 460 (1981)
 5 ANCAB 257 (Apr. 21, 1981)
 5 ANCAB 260, 88 I.D. 511 (1981)
 5 ANCAB 265, 88 I.D. 513 (1981)
 5 ANCAB 279 (Apr. 30, 1981)
 5 ANCAB 281 (May 1, 1981)
 5 ANCAB 284 (May 4, 1981)
 5 ANCAB 290 (May 11, 1981)
 5 ANCAB 297 (May 13, 1981)
 5 ANCAB 299 (May 13, 1981)
 5 ANCAB 302 (May 29, 1981)
 5 ANCAB 304 (May 29, 1981)
 5 ANCAB 307, 88 I.D. 629 (1981)
 5 ANCAB 324, 88 I.D. 636 (1981)
 5 ANCAB 343 (June 26, 1981)
 5 ANCAB 354 (July 24, 1981)
 5 ANCAB 368 (July 27, 1981)
 5 ANCAB 373 (July 28, 1981)
 6 ANCAB 1, 88 I.D. 711 (1981)
 6 ANCAB 17, 88 I.D. 718 (1981)
 6 ANCAB 27 (Aug. 19, 1981)
 6 ANCAB 32 (Aug. 19, 1981)
 6 ANCAB 37, 88 I.D. 757 (1981)
 6 ANCAB 45 (Aug. 24, 1981)

85 STAT: (Continued)

6 ANCAB 50 (Aug. 24, 1981)
 6 ANCAB 55 (Aug. 24, 1981)
 6 ANCAB 60 (Aug. 24, 1981)
 6 ANCAB 65, 88 I.D. 760 (1981)
 6 ANCAB 95, 88 I.D. 886 (1981)
 6 ANCAB 111 (Sept. 29, 1981)
 6 ANCAB 122 (Oct. 6, 1981)
 6 ANCAB 129 (Oct. 22, 1981)
 6 ANCAB 138 (Oct. 30, 1981)
 6 ANCAB 143 (Oct. 30, 1981)
 6 ANCAB 147 (Nov. 27, 1981)
 6 ANCAB 152, 88 I.D. 1027 (1981)
 6 ANCAB 157, 88 I.D. 1028 (1981)
 6 ANCAB 181, 88 I.D. 1039 (1981)
 6 ANCAB 203, 88 I.D. 1047 (1981)
 6 ANCAB 219, 88 I.D. 1086 (1981)
 6 ANCAB 242, 88 I.D. 1105 (1981)
 8 IBIA 218, 88 I.D. 261 (1981)
 9 IBIA 3, 88 I.D. 575 (1981)
 694 -----58 IBLA 118 (Sept. 24, 1981)
 701 ----- 5 ANCAB 147, 88 I.D. 14 (1981)
 6 ANCAB 1, 88 I.D. 711 (1981)
 6 ANCAB 37, 88 I.D. 757 (1981)
 702 -----54 IBLA 165 (Apr. 21, 1981)
 705 ----- 6 ANCAB 65, 88 I.D. 760 (1981)
 6 ANCAB 111 (Sept. 29, 1981)
 710 -----52 IBLA 222 (Jan. 30, 1981)

86 STAT:

page 1311 -----54 IBLA 8 (Apr. 6, 1981)

87 STAT:

page 99 ----- 9 IBIA 25, 88 I.D. 619 (1981)
 466 ----- 9 IBIA 25, 88 I.D. 619 (1981)
 584 -----52 IBLA 222 (Jan. 30, 1981)
 770 ----- 9 IBIA 141 (Dec. 22, 1981)

88 STAT:

page 2094 -----55 IBLA 31 (May 28, 1981)

89 STAT:

page 577 ----- 9 IBIA 36 (July 10, 1981)
 1145 ----- 6 ANCAB 203, 88 I.D. 1047 (1981)
 8 IBIA 218, 88 I.D. 261 (1981)
 1146 ----- 6 ANCAB 65, 88 I.D. 760 (1981)
 6 ANCAB 111 (Sept. 29, 1981)
 1150 ----- 6 ANCAB 203, 88 I.D. 1047 (1981)
 1151 ----- 6 ANCAB 203, 88 I.D. 1047 (1981)

90 STAT:

page 303 -----57 IBLA 71 (Aug. 20, 1981)
 1083 -----53 IBLA 300 (Mar. 24, 1981)
 1085 -----M-36910 (Supp.), 88 I.D. 909
 (1981)
 1090 -----M-36939, 88 I.D. 1003 (1981)
 1342 -----52 IBLA 87, 88 I.D. 31 (1981)
 54 IBLA 124 (Apr. 17, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 1343 -----57 IBLA 68 (Aug. 18, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 1935 ----- 6 ANCAB 203, 88 I.D. 1047 (1981)
 2735 ----- 4 OHA 211 (Nov. 24, 1981)
 2743 -----52 IBLA 198 (Jan. 26, 1981)
 53 IBLA 310 (Mar. 25, 1981)
 55 IBLA 68 (June 1, 1981)
 55 IBLA 218 (June 18, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 2744 -----54 IBLA 309 (Apr. 30, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 2769 -----59 IBLA 1, 88 I.D. 925 (1981)
 2786 -----60 IBLA 1 (Nov. 12, 1981)

90 STAT: (Continued)

page 2789 -----55 IBLA 223 (June 18, 1981)
 2792 -----52 IBLA 87, 88 I.D. 31 (1981)
 54 IBLA 103 (Apr. 15, 1981)
 55 IBLA 20 (May 26, 1981)
 55 IBLA 59 (May 29, 1981)
 58 IBLA 115 (Sept. 24, 1981)
 2793 -----5 ANCAB 147, 88 I.D. 14 (1981)
 55 IBLA 218 (June 18, 1981)
 56 IBLA 139 (July 20, 1981)
 58 IBLA 329 (Oct. 26, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 2962 -----52 IBLA 302 (Feb. 10, 1981)

91 STAT:

page 285 -----52 IBLA 105 (Jan. 12, 1981)
 445 -----3 IBSMA 17, 88 I.D. 269 (1981)
 3 IBSMA 32, 88 I.D. 344 (1981)
 3 IBSMA 83, 88 I.D. 448 (1981)
 3 IBSMA 100, 88 I.D. 474 (1981)
 3 IBSMA 107, 88 I.D. 477 (1981)
 3 IBSMA 118, 88 I.D. 495 (1981)
 3 IBSMA 124, 88 I.D. 498 (1981)
 3 IBSMA 128, 88 I.D. 500 (1981)
 3 IBSMA 136, 88 I.D. 503 (1981)
 3 IBSMA 145, 88 I.D. 508 (1981)
 3 IBSMA 154, 88 I.D. 570 (1981)
 3 IBSMA 165, 88 I.D. 581 (1981)
 3 IBSMA 175, 88 I.D. 613 (1981)
 3 IBSMA 182, 88 I.D. 616 (1981)
 3 IBSMA 188, 88 I.D. 652 (1981)
 3 IBSMA 200, 88 I.D. 657 (1981)
 3 IBSMA 207, 88 I.D. 660 (1981)
 3 IBSMA 218, 88 I.D. 672 (1981)
 3 IBSMA 228, 88 I.D. 685 (1981)
 3 IBSMA 252, 88 I.D. 742 (1981)
 3 IBSMA 292, 88 I.D. 826 (1981)
 3 IBSMA 322, 88 I.D. 851 (1981)
 3 IBSMA 338, 88 I.D. 861 (1981)
 3 IBSMA 377, 88 I.D. 1112 (1981)
 445-532 -----3 IBSMA 9, 88 I.D. 266 (1981)
 3 IBSMA 26, 88 I.D. 273 (1981)
 3 IBSMA 92, 88 I.D. 456 (1981)
 3 IBSMA 111, 88 I.D. 492 (1981)
 3 IBSMA 241, 88 I.D. 737 (1981)
 449 -----3 IBSMA 322, 88 I.D. 851 (1981)
 504 -----3 IBSMA 32, 88 I.D. 344 (1981)
 3 IBSMA 322, 88 I.D. 851 (1981)
 511 -----3 IBSMA 322, 88 I.D. 851 (1981)
 516 -----3 IBSMA 322, 88 I.D. 851 (1981)
 1369 -----6 ANCAB 65, 88 I.D. 760 (1981)
 6 ANCAB 203, 88 I.D. 1047 (1981)
 1396 -----6 ANCAB 111 (Sept. 29, 1981)

92 STAT:

page 3 -----M-36931, 88 I.D. 228 (1981)
 207 -----M-36939, 88 I.D. 1003 (1981)
 631 -----57 IBLA 71 (Aug. 20, 1981)
 1466-1470 -----54 IBLA 174 (Apr. 21, 1981)
 1803 -----56 IBLA 258, 88 I.D. 665 (1981)
 1808 -----56 IBLA 258, 88 I.D. 665 (1981)
 2073 -----60 IBLA 81 (Nov. 19, 1981)
 2074 -----58 IBLA 390, 88 I.D. 918 (1981)
 2383 -----IBCA-1389-9-80, 88 I.D. 431
 (1981)

92 STAT: (Continued)

IBCA-1392-9-80, 88 I.D. 361
 (1981)
 IBCA-1420-1-81, 88 I.D. 324
 (1981)
 54 IBLA 309 (Apr. 30, 1981)
 3069 -----8 IBIA 254, 88 I.D. 410 (1981)
 3174 -----M-36937, 88 I.D. 813 (1981)
 3467 -----57 IBLA 146 (Aug. 25, 1981)
 3477 -----57 IBLA 146 (Aug. 25, 1981)
 3501 -----59 IBLA 320 (Nov. 4, 1981)
 3528 -----55 IBLA 31 (May 28, 1981)
 3752 -----57 IBLA 319 (Sept. 1, 1981)

93 STAT:

page 386 -----6 ANCAB 203, 88 I.D. 1047 (1981)
 1226 -----57 IBLA 319 (Sept. 1, 1981)

94 STAT:

page 763-777 -----55 IBLA 249, 88 I.D. 609 (1981)
 1207 -----8 IBIA 295, 88 I.D. 561 (1981)
 2271 -----M-36937, 88 I.D. 813 (1981)
 2371 -----5 ANCAB 324, 88 I.D. 636 (1981)
 6 ANCAB 1, 88 I.D. 711 (1981)
 6 ANCAB 37, 88 I.D. 757 (1981)
 53 IBLA 168 (Mar. 12, 1981)
 53 IBLA 208, 88 I.D. 373 (1981)
 53 IBLA 306 (Mar. 25, 1981)
 54 IBLA 295 (Apr. 29, 1981)
 54 IBLA 306 (Apr. 29, 1981)
 55 IBLA 232, 88 I.D. 601 (1981)
 56 IBLA 69 (July 10, 1981)
 56 IBLA 242, 88 I.D. 663 (1981)
 57 IBLA 95 (Aug. 25, 1981)
 57 IBLA 310 (Aug. 31, 1981)
 59 IBLA 345 (Nov. 5, 1981)
 59 IBLA 361 (Nov. 9, 1981)
 59 IBLA 384 (Nov. 9, 1981)
 60 IBLA 101 (Nov. 19, 1981)
 60 IBLA 214 (Nov. 27, 1981)
 60 IBLA 252 (Dec. 4, 1981)
 60 IBLA 394 (Dec. 23, 1981)
 60 IBLA 399 (Dec. 28, 1981)
 61 IBLA 1 (Dec. 28, 1981)
 2431 -----5 ANCAB 324, 88 I.D. 636 (1981)
 2435 -----53 IBLA 208, 88 I.D. 373 (1981)
 53 IBLA 306 (Mar. 25, 1981)
 54 IBLA 295 (Apr. 29, 1981)
 54 IBLA 306 (Apr. 29, 1981)
 54 IBLA 346 (May 12, 1981)
 56 IBLA 69 (July 10, 1981)
 56 IBLA 242, 88 I.D. 663 (1981)
 59 IBLA 345 (Nov. 5, 1981)
 59 IBLA 361 (Nov. 9, 1981)
 59 IBLA 384 (Nov. 9, 1981)
 60 IBLA 101 (Nov. 19, 1981)
 60 IBLA 214 (Nov. 27, 1981)
 60 IBLA 252 (Dec. 4, 1981)
 60 IBLA 394 (Dec. 23, 1981)
 60 IBLA 399 (Dec. 28, 1981)
 61 IBLA 1 (Dec. 28, 1981)
 2435-2436 -----52 IBLA 222 (Jan. 30, 1981)
 2435-2437 -----53 IBLA 168 (Mar. 12, 1981)
 2452 -----55 IBLA 232, 88 I.D. 601 (1981)
 57 IBLA 310 (Aug. 31, 1981)
 3370 -----55 IBLA 31 (May 28, 1981)

page 2326 -----	58 IBLA 46 (Sept. 21, 1981)	page 2455 -----	58 IBLA 94 (Sept. 24, 1981)
2329-2333 -----	58 IBLA 390, 88 I.D. 918 (1981)		58 IBLA 98 (Sept. 24, 1981)
2332 -----	59 IBLA 1, 88 I.D. 925 (1981)		58 IBLA 103 (Sept. 24, 1981)
2339 -----	M-36914 (Supp.), 88 I.D. 253 (1981)		58 IBLA 108 (Sept. 24, 1981)
	M-36914 (Supp. I), 88 I.D. 1055 (1981)		58 IBLA 202 (Sept. 29, 1981)
2340 -----	M-36914 (Supp.), 88 I.D. 253 (1981)	2477 -----	58 IBLA 260 (Oct. 6, 1981)
	M-36914 (Supp. I), 88 I.D. 1055 (1981)		5 ANCAB 147, 88 I.D. 14 (1981)
			5 ANCAB 307, 88 I.D. 629 (1981)
			55 IBLA 151 (June 8, 1981)
			55 IBLA 360 (June 26, 1981)
		3689 -----	M-36942, 88 I.D. 1090 (1981)

* * * * *

(C) UNITED STATES CODES

TITLE 5:

sec. 551 ----- 3 IBSMA 44, 88 I.D. 394 (1981)
 551(4) -----57 IBLA 53 (Aug. 17, 1981)
 551(5) ----- 3 IBSMA 44, 88 I.D. 394 (1981)
 551(6) ----- 3 IBSMA 44, 88 I.D. 394 (1981)
 551(7) ----- 3 IBSMA 44, 88 I.D. 394 (1981)
 551(9) ----- 3 IBSMA 44, 88 I.D. 394 (1981)
 551(12) ----- 3 IBSMA 44, 88 I.D. 394 (1981)
 551(13) ----- 3 IBSMA 44, 88 I.D. 394 (1981)
 552 -----55 IBLA 171 (June 11, 1981)
 57 IBLA 63 (Aug. 17, 1981)
 552(a) -----54 IBLA 390, 88 I.D. 557 (1981)
 57 IBLA 53 (Aug. 17, 1981)
 552(a)(1) ----55 IBLA 171 (June 11, 1981)
 552(a)(1)(A) -54 IBLA 390, 88 I.D. 557 (1981)
 552(a)(1)(D) -55 IBLA 96 (June 1, 1981)
 55 IBLA 171 (June 11, 1981)
 60 IBLA 293 (Dec. 18, 1981)
 552(a)(1)(E) -55 IBLA 96 (June 1, 1981)
 552(a)(2) ----53 IBLA 261 (Mar. 23, 1981)
 552(b)(4) ---- M-36925, 88 I.D. 699 (1981)
 552(b)(9) ---- M-36925, 88 I.D. 699 (1981)
 553 -----53 IBLA 261 (Mar. 23, 1981)
 57 IBLA 53 (Aug. 17, 1981)
 60 IBLA 331 (Dec. 22, 1981)
 553(b) -----57 IBLA 53 (Aug. 17, 1981)
 554 ----- 3 IBSMA 44, 88 I.D. 394 (1981)
 55 IBLA 324 (June 26, 1981)
 55 IBLA 390 (June 30, 1981)
 60 IBLA 386 (Dec. 23, 1981)
 556(d) ----- 9 IBIA 52, 88 I.D. 676 (1981)
 54 IBLA 247 (Apr. 27, 1981)
 556(e) ----- 9 IBIA 52, 88 I.D. 676 (1981)
 557 -----56 IBLA 61 (July 10, 1981)
 557(c) ----- 3 IBSMA 72, 88 I.D. 406 (1981)
 701 -----54 IBLA 215 (Apr. 23, 1981)
 704 -----57 IBLA 288 (Aug. 31, 1981)
 706(2)(A) ---- M-36925, 88 I.D. 699 (1981)
 3105 -----59 IBLA 1, 88 I.D. 925 (1981)
 5536 ----- 4 OHA 140 (Apr. 6, 1981)

TITLE 6:

sec. 557 ----- 9 IBIA 52, 88 I.D. 676 (1981)

TITLE 7:

sec. 1011(c) -----54 IBLA 162 (Apr. 21, 1981)
 1018 -----54 IBLA 162 (Apr. 21, 1981)

TITLE 8:

sec. 1401 -----52 IBLA 52 (Jan. 6, 1981)
 53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 58 IBLA 21 (Sept. 16, 1981)
 59 IBLA 170 (Oct. 26, 1981)

TITLE 10:

sec. 2301 ----- IBCA-1434-2-81, 88 I.D. 979
 (1981)
 2304 ----- IBCA-1330-1-80, 88 I.D. 836
 (1981)
 3062(c) -----54 IBLA 38, 88 I.D. 437 (1981)
 3495 -----54 IBLA 38, 88 I.D. 437 (1981)

TITLE 15:

sec. 176(a) ----- M-36925, 88 I.D. 699 (1981)
 216 ----- M-36925, 88 I.D. 699 (1981)
 751 et seq. -- IBCA-1389-9-80, 88 I.D. 431
 (1981)
 1681-1681f ----53 IBLA 48 (Feb. 27, 1981)
 3301-3432 -----52 IBLA 27, 88 I.D. 7 (1981)

TITLE 15: (Continued)

sec. 3320 -----52 IBLA 27, 88 I.D. 7 (1981)
 3320(a) -----52 IBLA 27, 88 I.D. 7 (1981)
 3320(c) -----52 IBLA 27, 88 I.D. 7 (1981)

TITLE 16:

sec. 1c -----60 IBLA 386 (Dec. 23, 1981)
 273 -----53 IBLA 289 (Mar. 24, 1981)
 350 -----52 IBLA 87, 88 I.D. 31 (1981)
 350a -----52 IBLA 87, 88 I.D. 31 (1981)
 460dd -----60 IBLA 386 (Dec. 23, 1981)
 4601-12
 et seq. ---- M-36931, 88 I.D. 228 (1981)
 460mm -----59 IBLA 176 (Oct. 26, 1981)
 460z -----53 IBLA 341 (Mar. 26, 1981)
 470f -----56 IBLA 284 (July 28, 1981)
 471 -----53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 23 (May 26, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 471 et seq. --60 IBLA 14 (Nov. 16, 1981)
 485 -----52 IBLA 302 (Feb. 10, 1981)
 58 IBLA 329 (Oct. 16, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 486 -----52 IBLA 302 (Feb. 10, 1981)
 513-519 -----52 IBLA 302 (Feb. 10, 1981)
 58 IBLA 312 (Oct. 16, 1981)
 513-520 -----52 IBLA 302 (Feb. 10, 1981)
 520 -----52 IBLA 302 (Feb. 10, 1981)
 54 IBLA 162 (Apr. 21, 1981)
 56 IBLA 86, 88 I.D. 646 (1981)
 58 IBLA 312 (Oct. 16, 1981)
 521 -----58 IBLA 312 (Oct. 16, 1981)
 528 -----58 IBLA 294 (Oct. 14, 1981)
 569 -----61 IBLA 8 (Dec. 29, 1981)
 668 et seq. -- M-36936, 88 I.D. 586 (1981)
 668-668d ---- M-36934, 88 I.D. 338 (1981)
 668(b) ----- M-36936, 88 I.D. 586 (1981)
 668(a)-(b) --- M-36936, 88 I.D. 586 (1981)
 668a ----- M-36934, 88 I.D. 338 (1981)
 668dd -----61 IBLA 43 (Dec. 31, 1981)
 668dd(a)(1) --61 IBLA 43 (Dec. 31, 1981)
 668dd(c) ----57 IBLA 319 (Sept. 1, 1981)
 61 IBLA 43 (Dec. 31, 1981)
 668dd(d) ----61 IBLA 43 (Dec. 31, 1981)
 670g -----58 IBLA 294 (Oct. 14, 1981)
 670h(a)(1) ---58 IBLA 294 (Oct. 14, 1981)
 670h(c)(1) ---58 IBLA 294 (Oct. 14, 1981)
 670h(c)(1)(A)-58 IBLA 294 (Oct. 14, 1981)
 670h(c)(3)(D)-58 IBLA 294 (Oct. 14, 1981)
 701 -----57 IBLA 319 (Sept. 1, 1981)
 703 ----- M-36936, 88 I.D. 586 (1981)
 703 et seq. -- M-36936, 88 I.D. 586 (1981)
 704 ----- M-36936, 88 I.D. 586 (1981)
 712 ----- M-36936, 88 I.D. 586 (1981)
 715d -----57 IBLA 319 (Sept. 1, 1981)
 715e -----54 IBLA 326 (Apr. 30, 1981)
 57 IBLA 319 (Sept. 1, 1981)
 718 -----57 IBLA 319 (Sept. 1, 1981)
 791a -----55 IBLA 42 (May 28, 1981)
 818 -----56 IBLA 73 (July 15, 1981)
 831-831dd ----54 IBLA 162 (Apr. 21, 1981)
 1131 -----53 IBLA 159 (Mar. 12, 1981)
 54 IBLA 242, 88 I.D. 490 (1981)
 54 IBLA 300 (Apr. 29, 1981)
 58 IBLA 213 (Sept. 29, 1981)
 59 IBLA 291 (Oct. 30, 1981)
 59 IBLA 301 (Nov. 3, 1981)
 60 IBLA 240 (Dec. 4, 1981)
 60 IBLA 305 (Dec. 18, 1981)
 1131 et seq. --59 IBLA 291 (Oct. 30, 1981)
 1131(c) -----53 IBLA 159 (Mar. 12, 1981)
 54 IBLA 31 (Apr. 6, 1981)
 56 IBLA 206 (July 22, 1981)

TITLE 16: (Continued)

58 IBLA 166 (Sept. 28, 1981)
 58 IBLA 213 (Sept. 29, 1981)
 59 IBLA 291 (Oct. 30, 1981)
 59 IBLA 301 (Nov. 3, 1981)
 60 IBLA 54 (Nov. 17, 1981)
 60 IBLA 278 (Dec. 17, 1981)
 60 IBLA 305 (Dec. 18, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)
 61 IBLA 23 (Dec. 29, 1981)
 M-36910 (Supp.), 88 I.D. 909 (1981)
 1131-1136 -----55 IBLA 232, 88 I.D. 601 (1981)
 1132 -----59 IBLA 291 (Oct. 30, 1981)
 59 IBLA 301 (Nov. 3, 1981)
 61 IBLA 23 (Dec. 29, 1981)
 1132(a) -----60 IBLA 305 (Dec. 18, 1981)
 1132(b) -----59 IBLA 291 (Oct. 30, 1981)
 1132(c) -----59 IBLA 291 (Oct. 30, 1981)
 60 IBLA 305 (Dec. 18, 1981)
 1132(d)(1) -----60 IBLA 305 (Dec. 18, 1981)
 1133(d)(3) -----53 IBLA 179 (Mar. 16, 1981)
 55 IBLA 232, 88 I.D. 601 (1981)
 M-36937, 88 I.D. 813 (1981)
 1271 -----55 IBLA 283 (June 25, 1981)
 1271-1287 -----55 IBLA 31 (May 28, 1981)
 1273 -----55 IBLA 283 (June 25, 1981)
 1274(a)(21) -----55 IBLA 31 (May 28, 1981)
 1276 -----55 IBLA 31 (May 28, 1981)
 1280(a) -----55 IBLA 31 (May 28, 1981)
 1280(b) -----55 IBLA 31 (May 28, 1981)
 1281 -----55 IBLA 283 (June 25, 1981)
 1283(b) -----55 IBLA 283 (June 25, 1981)
 1284(d) -----55 IBLA 283 (June 25, 1981)
 1331 -----56 IBLA 258, 88 I.D. 665 (1981)
 60 IBLA 205 (Nov. 27, 1981)
 1333 -----56 IBLA 258, 88 I.D. 665 (1981)
 1333(b)(2) -----56 IBLA 258, 88 I.D. 665 (1981)
 1333(c) -----60 IBLA 205 (Nov. 27, 1981)
 1338(a)(3) -----60 IBLA 205 (Nov. 27, 1981)
 1531 -----56 IBLA 284 (July 28, 1981)
 58 IBLA 294 (Oct. 14, 1981)
 1531-1543 -----4 OHA 214 (Dec. 22, 1981)
 1536(a) -----M-36938, 88 I.D. 903 (1981)
 1536(a)(2) -----M-36938, 88 I.D. 903 (1981)
 1536(b) -----M-36938, 88 I.D. 903 (1981)
 1538(a)(1)(A) - 4 OHA 214 (Dec. 22, 1981)
 1683(a) -----55 IBLA 283 (June 25, 1981)
 1901 -----56 IBLA 43 (July 8, 1981)
 59 IBLA 268 (Oct. 29, 1981)
 59 IBLA 326 (Nov. 5, 1981)
 1901 et seq. -----56 IBLA 36 (July 8, 1981)
 59 IBLA 393 (Nov. 10, 1981)
 1901-1912 -----53 IBLA 333 (Mar. 26, 1981)
 54 IBLA 124 (Apr. 17, 1981)
 60 IBLA 386 (Dec. 23, 1981)
 1903 -----54 IBLA 124 (Apr. 17, 1981)
 1907 -----57 IBLA 68 (Aug. 18, 1981)
 58 IBLA 121 (Sept. 24, 1981)
 58 IBLA 139 (Sept. 25, 1981)
 58 IBLA 251 (Oct. 6, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 60 IBLA 386 (Dec. 23, 1981)
 3101 -----55 IBLA 232, 88 I.D. 601 (1981)
 57 IBLA 310 (Aug. 31, 1981)
 3143 -----55 IBLA 232, 88 I.D. 601 (1981)
 57 IBLA 310 (Aug. 31, 1981)
 3215 -----57 IBLA 95 (Aug. 25, 1981)

TITLE 18:

sec. 216 -----M-36925, 88 I.D. 699 (1981)
 641 -----59 IBLA 155 (Oct. 26, 1981)
 1001 -----53 IBLA 57 (Feb. 27, 1981)
 55 IBLA 196 (June 16, 1981)
 56 IBLA 327 (July 30, 1981)

TITLE 18: (Continued)

sec. 1151(a) -----M-36933, 88 I.D. 333 (1981)
 1151(b) -----M-36933, 88 I.D. 333 (1981)
 1905 -----M-36925, 88 I.D. 699 (1981)
 3692 -----M-36925, 88 I.D. 699 (1981)

TITLE 19:

sec. 1335 -----M-36925, 88 I.D. 699 (1981)

TITLE 23:

sec. 317 -----5 ANCAB 147, 88 I.D. 14 (1981)
 55 IBLA 360 (June 26, 1981)

TITLE 25:

sec. 1a -----8 IBIA 283 (May 15, 1981)
 2 -----8 IBIA 254, 88 I.D. 410 (1981)
 9 -----8 IBIA 254, 88 I.D. 410 (1981)
 81 -----9 IBIA 141 (Dec. 22, 1981)
 177 -----9 IBIA 36, (July 10, 1981)
 190 -----58 IBLA 21 (Sept. 16, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 194 -----53 IBLA 208, 88 I.D. 373 (1981)
 311 -----55 IBLA 360 (June 26, 1981)
 323 -----9 IBIA 126, 88 I.D. 1020 (1981)
 324 -----9 IBIA 126, 88 I.D. 1020 (1981)
 331-349 -----53 IBLA 208, 88 I.D. 373 (1981)
 332 -----53 IBLA 279 (Mar. 24, 1981)
 58 IBLA 21 (Sept. 16, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 334 -----52 IBLA 52 (Jan. 6, 1981)
 52 IBLA 216, 88 I.D. 244 (1981)
 53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 23 (May 26, 1981)
 55 IBLA 131 (June 3, 1981)
 55 IBLA 143 (June 4, 1981)
 55 IBLA 332 (June 26, 1981)
 58 IBLA 21 (Sept. 16, 1981)
 58 IBLA 94 (Sept. 24, 1981)
 58 IBLA 98 (Sept. 24, 1981)
 58 IBLA 103 (Sept. 24, 1981)
 58 IBLA 108 (Sept. 24, 1981)
 58 IBLA 199 (Sept. 29, 1981)
 58 IBLA 202 (Sept. 29, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 59 IBLA 182 (Oct. 27, 1981)
 336 -----53 IBLA 208, 88 I.D. 373 (1981)
 337 -----58 IBLA 21 (Sept. 16, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 345 -----53 IBLA 279 (Mar. 24, 1981)
 58 IBLA 21 (Sept. 16, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 346 -----53 IBLA 279 (Mar. 24, 1981)
 58 IBLA 21 (Sept. 16, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 348 -----9 IBIA 25, 88 I.D. 619 (1981)
 9 IBIA 67, (Sept. 3, 1981)
 9 IBIA 75 (Sept. 25, 1981)
 9 IBIA 94, 88 I.D. 993 (1981)
 357 -----9 IBIA 126, 88 I.D. 1020 (1981)
 55 IBLA 51 (May 29, 1981)
 371 -----9 IBIA 43 (July 27, 1981)
 9 IBIA 52, 88 I.D. 676 (1981)
 9 IBIA 67 (Sept. 3, 1981)
 9 IBIA 94, 88 I.D. 993 (1981)
 372 -----9 IBIA 75 (Sept. 25, 1981)
 372-373 -----8 IBIA 254, 88 I.D. 410 (1981)
 9 IBIA 25, 88 I.D. 619 (1981)
 372a -----8 IBIA 254, 88 I.D. 410 (1981)
 372a(1) -----8 IBIA 254, 88 I.D. 410 (1981)
 372a(1)(c) ---8 IBIA 254, 88 I.D. 410 (1981)
 372a-
 372a(1)(c) --8 IBIA 254, 88 I.D. 410 (1981)

TITLE 25: (Continued)

sec. 372a(1)(a)-
 372a(1)(d) -- 8 IBIA 254, 88 I.D. 410 (1981)
 373 ----- 9 IBIA 75 (Sept. 25, 1981)
 9 IBIA 94, 88 I.D. 993 (1981)
 9 IBIA 136 (Dec. 1, 1981)
 450a ----- M-36933, 88 I.D. 333 (1981)
 461 et seq. -- M-36933, 88 I.D. 333 (1981)
 461-479 ----- 8 IBIA 254, 88 I.D. 410 (1981)
 8 IBIA 283 (May 15, 1981)
 8 IBIA 295, 88 I.D. 561 (1981)
 9 IBIA 141 (Dec. 22, 1981)
 461-486 ----- 9 IBIA 36 (July 10, 1981)
 9 IBIA 90 (Oct. 23, 1981)
 463 ----- 52 IBLA 164 (Jan. 21, 1981)
 57 IBLA 104 (Aug. 25, 1981)
 464 ----- 8 IBIA 295, 88 I.D. 561 (1981)
 9 IBIA 36 (July 10, 1981)
 9 IBIA 43 (July 27, 1981)
 465 ----- 9 IBIA 82, 88 I.D. 987 (1981)
 476 ----- 8 IBIA 295, 88 I.D. 561 (1981)
 9 IBIA 63 (Aug. 5, 1981)
 9 IBIA 141 (Dec. 22, 1981)
 477 ----- 9 IBIA 141 (Dec. 22, 1981)
 478 ----- 9 IBIA 141 (Dec. 22, 1981)
 479 ----- 53 IBLA 208, 88 I.D. 373 (1981)
 564-564x ----- 9 IBIA 25, 88 I.D. 619 (1981)
 9 IBIA 76 (Sept. 29, 1981)
 564h ----- 9 IBIA 25, 88 I.D. 619 (1981)
 565 ----- 9 IBIA 76 (Sept. 29, 1981)
 565-565g ----- 9 IBIA 25, 88 I.D. 619 (1981)
 9 IBIA 76 (Sept. 29, 1981)
 565a ----- 9 IBIA 76 (Sept. 29, 1981)
 565a(b) ----- 9 IBIA 25, 88 I.D. 619 (1981)
 9 IBIA 76 (Sept. 29, 1981)
 565g ----- 9 IBIA 76 (Sept. 29, 1981)
 607(c) ----- 8 IBIA 312 (May 29, 1981)
 891-902 ----- 9 IBIA 141 (Dec. 22, 1981)
 903-903f ----- 9 IBIA 141 (Dec. 22, 1981)
 903a(a) ----- 9 IBIA 141 (Dec. 22, 1981)
 1911(a) ----- 8 IBIA 254, 88 I.D. 410 (1981)
 2010 ----- M-36933, 88 I.D. 333 (1981)

TITLE 26:

sec. 613(b) ----- M-36937, 88 I.D. 813 (1981)
 6402 ----- M-36942, 88 I.D. 1090 (1981)
 6402(a) ----- M-36942, 88 I.D. 1090 (1981)
 6403 ----- M-36942, 88 I.D. 1090 (1981)
 6405 ----- M-36942, 88 I.D. 1090 (1981)
 6405(a) ----- M-36942, 88 I.D. 1090 (1981)

TITLE 28:

sec. 1291 ----- 52 IBLA 74 (Jan. 9, 1981)
 1292(b) ----- 59 IBLA 1, 88 I.D. 925 (1981)
 1360 ----- 9 IBIA 25, 88 I.D. 619 (1981)
 1920 ----- 3 IBSMA 44, 88 I.D. 394 (1981)

TITLE 30:

sec. 20 ----- 55 IBLA 23 (May 26, 1981)
 58 IBLA 103 (Sept. 24, 1981)
 58 IBLA 108 (Sept. 24, 1981)
 58 IBLA 202 (Sept. 29, 1981)
 21-47 ----- 59 IBLA 1, 88 I.D. 925 (1981)
 21-54 ----- 58 IBLA 390, 88 I.D. 918 (1981)
 22 ----- 53 IBLA 182 (Mar. 17, 1981)
 53 IBLA 289 (Mar. 24, 1981)
 53 IBLA 353 (Mar. 30, 1981)
 54 IBLA 281 (Apr. 28, 1981)
 56 IBLA 247 (July 24, 1981)
 57 IBLA 167, 88 I.D. 772 (1981)
 58 IBLA 282 (Oct. 8, 1981)
 59 IBLA 207 (Oct. 27, 1981)
 59 IBLA 326 (Nov. 5, 1981)
 60 IBLA 29 (Nov. 16, 1981)
 60 IBLA 341 (Dec. 22, 1981)

TITLE 30: (Continued)

60 IBLA 349, 88 I.D. 1115 (1981)
 61 IBLA 8 (Dec. 29, 1981)
 M-36910 (Supp.), 88 I.D. 909 (1981)
 22 et seq. -- 5 ANCAB 147, 88 I.D. 14 (1981)
 6 ANCAB 65, 88 I.D. 760 (1981)
 52 IBLA 164 (Jan. 21, 1981)
 53 IBLA 5 (Feb. 26, 1981)
 56 IBLA 36 (July 8, 1981)
 57 IBLA 104 (Aug. 25, 1981)
 57 IBLA 225 (Aug. 27, 1981)
 57 IBLA 373 (Sept. 8, 1981)
 59 IBLA 393 (Nov. 10, 1981)
 22-24 ----- 60 IBLA 29 (Nov. 16, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)
 22-54 ----- 59 IBLA 207 (Oct. 27, 1981)
 23 ----- 53 IBLA 289 (Mar. 24, 1981)
 53 IBLA 333 (Mar. 26, 1981)
 54 IBLA 321 (Apr. 30, 1981)
 54 IBLA 355 (May 12, 1981)
 56 IBLA 300 (July 29, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 59 IBLA 134 (Oct. 26, 1981)
 59 IBLA 207 (Oct. 27, 1981)
 26 ----- 6 ANCAB 65, 88 I.D. 760 (1981)
 53 IBLA 289 (Mar. 24, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 26-28 ----- 60 IBLA 29 (Nov. 16, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 27 ----- 59 IBLA 1, 88 I.D. 925 (1981)
 28 ----- 6 ANCAB 65, 88 I.D. 760 (1981)
 49 IBLA 49A (May 29, 1981)
 52 IBLA 9 (Jan. 5, 1981)
 53 IBLA 106 (Mar. 4, 1981)
 55 IBLA 185 (June 16, 1981)
 56 IBLA 43 (July 8, 1981)
 56 IBLA 78, 88 I.D. 643 (1981)
 56 IBLA 327 (July 30, 1981)
 56 IBLA 337, 88 I.D. 682 (1981)
 58 IBLA 75 (Sept. 22, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 60 IBLA 173 (Nov. 24, 1981)
 28-1 ----- 49 IBLA 49A (May 29, 1981)
 52 IBLA 1 (Jan. 5, 1981)
 52 IBLA 137 (Jan. 16, 1981)
 53 IBLA 377 (Mar. 31, 1981)
 54 IBLA 343 (May 7, 1981)
 56 IBLA 112 (July 16, 1981)
 57 IBLA 76 (Aug. 21, 1981)
 60 IBLA 29 (Nov. 16, 1981)
 28b ----- 56 IBLA 78, 88 I.D. 643 (1981)
 28b-c ----- 61 IBLA 39 (Dec. 31, 1981)
 29 ----- 53 IBLA 247 (Mar. 19, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 60 IBLA 29 (Nov. 16, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)
 30 ----- 53 IBLA 247 (Mar. 19, 1981)
 58 IBLA 46 (Sept. 21, 1981)
 59 IBLA 316 (Nov. 4, 1981)
 60 IBLA 29 (Nov. 16, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)
 33-35 ----- 60 IBLA 29 (Nov. 16, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)
 35 ----- 53 IBLA 333 (Mar. 26, 1981)
 54 IBLA 355 (May 12, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 59 IBLA 134 (Oct. 26, 1981)
 35-38 ----- 58 IBLA 390, 88 I.D. 918 (1981)
 36 ----- 59 IBLA 1, 88 I.D. 925 (1981)
 36-38 ----- 60 IBLA 349, 88 I.D. 1115 (1981)
 37 ----- 59 IBLA 1, 88 I.D. 925 (1981)
 60 IBLA 29 (Nov. 16, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)

TITLE 30: (Continued)

38 -----52 IBLA 44 (Jan. 6, 1981)
 56 IBLA 78, 88 I.D. 643 (1981)
 58 IBLA 377 (Oct. 21, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 60 IBLA 267 (Dec. 17, 1981)
 39-42 -----60 IBLA 29 (Nov. 16, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)
 42 -----53 IBLA 182 (Mar. 17, 1981)
 54 IBLA 124 (Apr. 17, 1981)
 56 IBLA 78, 88 I.D. 643 (1981)
 57 IBLA 167, 88 I.D. 772 (1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 49e -----49 IBLA 49A (May 29, 1981)
 53 -----59 IBLA 316 (Nov. 4, 1981)
 71 -----M-36893 (Supp. II), 88 I.D. 247
 (1981)
 71-76 -----M-36893 (Supp. II), 88 I.D. 247
 (1981)
 72 -----M-36893 (Supp. II), 88 I.D. 247
 (1981)
 73 -----M-36893 (Supp. II), 88 I.D. 247
 (1981)
 77 -----M-36935, 88 I.D. 538 (1981)
 81 -----M-36935, 88 I.D. 538 (1981)
 83-85 -----M-36935, 88 I.D. 538 (1981)
 85 -----M-36935, 88 I.D. 538 (1981)
 121 -----M-36935, 88 I.D. 538 (1981)
 121-123 -----55 IBLA 305 (June 25, 1981)
 M-36935, 88 I.D. 538 (1981)
 124 -----M-36935, 88 I.D. 538 (1981)
 161 -----59 IBLA 1, 88 I.D. 925 (1981)
 181 -----52 IBLA 83 (Jan. 9, 1981)
 52 IBLA 116 (Jan. 13, 1981)
 52 IBLA 278 (Feb. 6, 1981)
 54 IBLA 38, 88 I.D. 437 (1981)
 55 IBLA 257 (June 22, 1981)
 57 IBLA 146 (Aug. 25, 1981)
 57 IBLA 319 (Sept. 1, 1981)
 58 IBLA 294 (Oct. 14, 1981)
 59 IBLA 348 (Nov. 5, 1981)
 60 IBLA 191 (Nov. 27, 1981)
 60 IBLA 397 (Dec. 28, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 61 IBLA 65 (Dec. 31, 1981)
 M-36935, 88 I.D. 538 (1981)
 181 et seq. --55 IBLA 257 (June 22, 1981)
 M-36935, 88 I.D. 538 (1981)
 M-36939, 88 I.D. 1003 (1981)
 181-263 -----54 IBLA 326, (Apr. 30, 1981)
 54 IBLA 340 (May 7, 1981)
 181-287 -----53 IBLA 153 (Mar. 12, 1981)
 54 IBLA 162 (Apr. 21, 1981)
 58 IBLA 115 (Sept. 24, 1981)
 58 IBLA 390, 88 I.D. 918 (1981)
 60 IBLA 181 (Nov. 25, 1981)
 60 IBLA 267 (Dec. 17, 1981)
 183 -----52 IBLA 60, 88 I.D. 24 (1981)
 184 -----56 IBLA 231 (July 22, 1981)
 58 IBLA 25 (Sept. 16, 1981)
 184a -----54 IBLA 61 (Apr. 10, 1981)
 184(h) -----54 IBLA 61 (Apr. 10, 1981)
 54 IBLA 194, 88 I.D. 479 (1981)
 54 IBLA 260 (Apr. 28, 1981)
 54 IBLA 271 (Apr. 28, 1981)
 55 IBLA 200 (June 16, 1981)
 55 IBLA 348 (June 26, 1981)
 56 IBLA 193 (July 22, 1981)
 184(h)(2) ----54 IBLA 61 (Apr. 10, 1981)
 54 IBLA 194, 88 I.D. 479 (1981)
 54 IBLA 260 (Apr. 28, 1981)
 54 IBLA 271 (Apr. 28, 1981)
 55 IBLA 200 (June 16, 1981)
 55 IBLA 348 (June 26, 1981)
 56 IBLA 193 (July 22, 1981)
 56 IBLA 225 (July 22, 1981)
 184(i) -----54 IBLA 61 (Apr. 10, 1981)

TITLE 30: (Continued)

sec. 185 -----59 IBLA 378 (Nov. 9, 1981)
 61 IBLA 57 (Dec. 31, 1981)
 185(a) -----59 IBLA 378 (Nov. 9, 1981)
 185(1) -----61 IBLA 57 (Dec. 31, 1981)
 187 -----55 IBLA 315 (June 26, 1981)
 M-36939, 88 I.D. 1003 (1981)
 187a -----52 IBLA 316 (Feb. 19, 1981)
 54 IBLA 4 (Apr. 1, 1981)
 54 IBLA 359 (May 18, 1981)
 187b -----52 IBLA 60, 88 I.D. 24 (1981)
 188 -----52 IBLA 316 (Feb. 19, 1981)
 56 IBLA 49 (July 8, 1981)
 56 IBLA 58 (July 10, 1981)
 57 IBLA 90 (Aug. 24, 1981)
 58 IBLA 175, 88 I.D. 879 (1981)
 59 IBLA 370, 88 I.D. 1012 (1981)
 60 IBLA 181 (Nov. 25, 1981)
 188(a) -----52 IBLA 60, 88 I.D. 24 (1981)
 M-36939, 88 I.D. 1003 (1981)
 188(b) -----52 IBLA 60, 88 I.D. 24 (1981)
 52 IBLA 113 (Jan. 13, 1981)
 52 IBLA 119, 88 I.D. 38 (1981)
 52 IBLA 146 (Jan. 16, 1981)
 52 IBLA 236 (Feb. 3, 1981)
 52 IBLA 250 (Feb. 6, 1981)
 52 IBLA 316 (Feb. 19, 1981)
 53 IBLA 165 (Mar. 12, 1981)
 53 IBLA 323, 88 I.D. 420 (1981)
 53 IBLA 328 (Mar. 26, 1981)
 53 IBLA 369 (Mar. 30, 1981)
 54 IBLA 113 (Apr. 16, 1981)
 55 IBLA 113 (June 3, 1981)
 55 IBLA 386 (June 30, 1981)
 56 IBLA 345 (Aug. 3, 1981)
 57 IBLA 46 (Aug. 17, 1981)
 57 IBLA 63 (Aug. 17, 1981)
 58 IBLA 175, 88 I.D. 879 (1981)
 59 IBLA 370, 88 I.D. 1012 (1981)
 59 IBLA 387 (Nov. 10, 1981)
 60 IBLA 142 (Nov. 24, 1981)
 60 IBLA 181 (Nov. 25, 1981)
 60 IBLA 224 (Nov. 30, 1981)
 60 IBLA 328 (Dec. 18, 1981)
 60 IBLA 366 (Dec. 22, 1981)
 60 IBLA 375 (Dec. 22, 1981)
 61 IBLA 71 (Dec. 31, 1981)
 188(c) -----52 IBLA 101 (Jan. 12, 1981)
 52 IBLA 113 (Jan. 13, 1981)
 52 IBLA 119, 88 I.D. 38 (1981)
 52 IBLA 146 (Jan. 16, 1981)
 52 IBLA 236 (Feb. 3, 1981)
 52 IBLA 250 (Feb. 6, 1981)
 53 IBLA 149 (Mar. 11, 1981)
 53 IBLA 165 (Mar. 12, 1981)
 53 IBLA 323, 88 I.D. 420 (1981)
 53 IBLA 328 (Mar. 26, 1981)
 54 IBLA 113 (Apr. 16, 1981)
 55 IBLA 113 (June 3, 1981)
 55 IBLA 386 (June 30, 1981)
 56 IBLA 345 (Aug. 3, 1981)
 57 IBLA 46 (Aug. 17, 1981)
 57 IBLA 63 (Aug. 17, 1981)
 57 IBLA 131 (Aug. 25, 1981)
 58 IBLA 220 (Sept. 30, 1981)
 59 IBLA 370, 88 I.D. 1012 (1981)
 59 IBLA 387 (Nov. 10, 1981)
 60 IBLA 21 (Nov. 16, 1981)
 60 IBLA 181 (Nov. 25, 1981)
 60 IBLA 224 (Nov. 30, 1981)
 60 IBLA 328 (Dec. 18, 1981)
 60 IBLA 375 (Dec. 22, 1981)
 61 IBLA 71 (Dec. 31, 1981)
 188a -----52 IBLA 60, 88 I.D. 24 (1981)
 189 -----52 IBLA 27, 88 I.D. 7 (1981)
 52 IBLA 60, 88 I.D. 24 (1981)
 54 IBLA 190 (Apr. 22, 1981)
 59 IBLA 192 (Oct. 27, 1981)

TITLE 30: (Continued)

M-36910 (Supp.), 88 I.D. 909 (1981)

193 -----58 IBLA 390, 88 I.D. 918 (1981)

201 -----M-36935, 88 I.D. 538 (1981)

201(a) -----60 IBLA 81 (Nov. 19, 1981)

M-36935, 88 I.D. 538 (1981)

201(a)(2)(A) - M-36939, 88 I.D. 1003 (1981)

201(b) -----53 IBLA 300 (Mar. 24, 1981)

55 IBLA 324 (June 26, 1981)

M-36893 (Supp. II), 88 I.D. 247 (1981)

M-36910 (Supp.), 88 I.D. 909 (1981)

203 -----M-36939, 88 I.D. 1003 (1981)

207 -----M-36939, 88 I.D. 1003 (1981)

207(a) -----M-36939, 88 I.D. 1003 (1981)

208-1 -----M-36935, 88 I.D. 538 (1981)

208-1(a) -----M-36935, 88 I.D. 538 (1981)

209 -----61 IBLA 47 (Dec. 31, 1981)

M-36939, 88 I.D. 1003 (1981)

211 -----58 IBLA 305 (Oct. 14, 1981)

M-36935, 88 I.D. 538 (1981)

211(a) -----57 IBLA 333 (Sept. 1, 1981)

58 IBLA 305 (Oct. 14, 1981)

211(b) -----58 IBLA 305 (Oct. 14, 1981)

M-36893 (Supp. II), 88 I.D. 247 (1981)

211(c) -----M-36893 (Supp. II), 88 I.D. 247 (1981)

212 -----M-36939, 88 I.D. 1003 (1981)

221(b) -----M-36893 (Supp. II), 88 I.D. 247 (1981)

226 -----52 IBLA 60, 88 I.D. 24 (1981)

53 IBLA 98 (Mar. 4, 1981)

54 IBLA 38, 88 I.D. 437 (1981)

55 IBLA 232, 88 I.D. 601 (1981)

56 IBLA 289 (July 28, 1981)

57 IBLA 310 (Aug. 31, 1981)

58 IBLA 329 (Oct. 16, 1981)

59 IBLA 130 (Oct. 26, 1981)

59 IBLA 179 (Oct. 27, 1981)

59 IBLA 226 (Oct. 28, 1981)

59 IBLA 348 (Nov. 5, 1981)

61 IBLA 43 (Dec. 31, 1981)

61 IBLA 47 (Dec. 31, 1981)

61 IBLA 65 (Dec. 31, 1981)

M-36935, 88 I.D. 538 (1981)

M-36939, 88 I.D. 1003 (1981)

226-2 -----57 IBLA 90 (Aug. 24, 1981)

226(a) -----54 IBLA 326 (Apr. 30, 1981)

57 IBLA 319 (Sept. 1, 1981)

58 IBLA 294 (Oct. 14, 1981)

226(b) -----53 IBLA 130 (Mar. 5, 1981)

54 IBLA 111 (Apr. 15, 1981)

54 IBLA 375, 88 I.D. 550 (1981)

59 IBLA 359 (Nov. 9, 1981)

60 IBLA 246 (Dec. 4, 1981)

60 IBLA 383 (Dec. 23, 1981)

60 IBLA 391 (Dec. 23, 1981)

226(c) -----52 IBLA 27, 88 I.D. 7 (1981)

52 IBLA 360 (Feb. 19, 1981)

53 IBLA 112, 88 I.D. 347 (1981)

54 IBLA 190 (Apr. 22, 1981)

55 IBLA 215 (June 18, 1981)

56 IBLA 211 (July 22, 1981)

56 IBLA 231 (July 22, 1981)

56 IBLA 295 (July 28, 1981)

56 IBLA 378 (Aug. 3, 1981)

57 IBLA 32 (Aug. 6, 1981)

58 IBLA 25 (Sept. 16, 1981)

58 IBLA 38 (Sept. 17, 1981)

59 IBLA 226 (Oct. 28, 1981)

60 IBLA 25 (Nov. 16, 1981)

60 IBLA 107 (Nov. 20, 1981)

61 IBLA 90 (Dec. 31, 1981)

226(d) -----52 IBLA 316 (Feb. 19, 1981)

TITLE 30: (Continued)

sec. 226(e) -----52 IBLA 308 (Feb. 10, 1981)

53 IBLA 204 (Mar. 18, 1981)

55 IBLA 167 (June 9, 1981)

57 IBLA 131 (Aug. 25, 1981)

58 IBLA 234 (Oct. 6, 1981)

61 IBLA 47 (Dec. 31, 1981)

226(f) -----52 IBLA 379 (Feb. 19, 1981)

58 IBLA 234 (Oct. 6, 1981)

61 IBLA 47 (Dec. 31, 1981)

226(j) -----53 IBLA 204 (Mar. 18, 1981)

59 IBLA 192 (Oct. 27, 1981)

60 IBLA 181 (Nov. 25, 1981)

241 -----M-36939, 88 I.D. 1003 (1981)

241(a) -----M-36935, 88 I.D. 538 (1981)

261-262 -----M-36935, 88 I.D. 538 (1981)

262 -----54 IBLA 77 (Apr. 14, 1981)

54 IBLA 85 (Apr. 14, 1981)

M-36935, 88 I.D. 538 (1981)

M-36939, 88 I.D. 1003 (1981)

271-276 -----60 IBLA 191 (Nov. 27, 1981)

M-36893 (Supp. II), 88 I.D. 247 (1981)

274 -----M-36893 (Supp. II), 88 I.D. 247 (1981)

281-282 -----M-36935, 88 I.D. 538 (1981)

281-287 -----M-36893 (Supp. II), 88 I.D. 247 (1981)

282 -----54 IBLA 77 (Apr. 14, 1981)

M-36935, 88 I.D. 538 (1981)

284 -----M-36893 (Supp. II), 88 I.D. 247 (1981)

301-306 -----57 IBLA 163 (Aug. 27, 1981)

351 -----57 IBLA 319 (Sept. 1, 1981)

61 IBLA 8 (Dec. 29, 1981)

351 et seq. --55 IBLA 280 (June 25, 1981)

351-358 -----52 IBLA 308 (Feb. 10, 1981)

351-359 -----52 IBLA 296 (Feb. 9, 1981)

53 IBLA 79 (Mar. 2, 1981)

54 IBLA 162 (Apr. 21, 1981)

55 IBLA 280 (June 25, 1981)

61 IBLA 8 (Dec. 29, 1981)

352 -----53 IBLA 79 (Mar. 2, 1981)

54 IBLA 38, 88 I.D. 437 (1981)

54 IBLA 162 (Apr. 21, 1981)

55 IBLA 280 (June 25, 1981)

57 IBLA 146 (Aug. 25, 1981)

57 IBLA 293 (Aug. 31, 1981)

57 IBLA 319 (Sept. 1, 1981)

501 -----52 IBLA 83 (Jan. 9, 1981)

60 IBLA 267 (Dec. 17, 1981)

501(a) -----59 IBLA 1, 88 I.D. 925 (1981)

501-505 -----60 IBLA 267 (Dec. 17, 1981)

502 -----M-36893 (Supp. II), 88 I.D. 247 (1981)

521 -----52 IBLA 83 (Jan. 9, 1981)

60 IBLA 267 (Dec. 17, 1981)

521 et seq. -- M-36935, 88 I.D. 538 (1981)

M-36937, 88 I.D. 813 (1981)

521(a) -----59 IBLA 1, 88 I.D. 925 (1981)

521-531 -----52 IBLA 83 (Jan. 9, 1981)

60 IBLA 267 (Dec. 17, 1981)

M-36893 (Supp. II), 88 I.D. 247 (1981)

525 -----60 IBLA 267 (Dec. 17, 1981)

530 -----M-36937, 88 I.D. 813 (1981)

541 -----M-36935, 88 I.D. 538 (1981)

541(a) -----59 IBLA 1, 88 I.D. 925 (1981)

541c -----M-36935, 88 I.D. 538 (1981)

601 -----54 IBLA 309 (Apr. 30, 1981)

59 IBLA 155 (Oct. 26, 1981)

601 et seq. -- M-36937, 88 I.D. 813 (1981)

611 -----52 IBLA 256 (Feb. 6, 1981)

54 IBLA 95 (Apr. 15, 1981)

54 IBLA 281 (Apr. 28, 1981)

56 IBLA 61 (July 10, 1981)

56 IBLA 247 (July 24, 1981)

TITLE 30: (Continued)

57 IBLA 167, 88 I.D. 772 (1981)
 58 IBLA 188 (Sept. 28, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 611-615 -----55 IBLA 340 (June 26, 1981)
 612 -----53 IBLA 75 (Mar. 2, 1981)
 55 IBLA 324 (June 26, 1981)
 55 IBLA 340 (June 26, 1981)
 59 IBLA 252 (Oct. 29, 1981)
 613 -----53 IBLA 75 (Mar. 2, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 59 IBLA 252 (Oct. 29, 1981)
 621 -----52 IBLA 56 (Jan. 6, 1981)
 54 IBLA 257 (Apr. 28, 1981)
 55 IBLA 42 (May 28, 1981)
 621(a) -----54 IBLA 67 (Apr. 10, 1981)
 54 IBLA 257 (Apr. 28, 1981)
 56 IBLA 73 (July 15, 1981)
 621(b) -----54 IBLA 67 (Apr. 10, 1981)
 54 IBLA 149, 88 I.D. 453 (1981)
 56 IBLA 73 (July 15, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 621-625 -----54 IBLA 67 (Apr. 10, 1981)
 54 IBLA 149, 88 I.D. 453 (1981)
 623 -----54 IBLA 67 (Apr. 10, 1981)
 54 IBLA 149, 88 I.D. 453 (1981)
 57 IBLA 5 (Aug. 5, 1981)
 624 -----56 IBLA 73 (July 15, 1981)
 701 -----53 IBLA 125 (Mar. 5, 1981)
 58 IBLA 224 (Sept. 30, 1981)
 707 -----53 IBLA 125 (Mar. 5, 1981)
 863 -----M-36935, 88 I.D. 538 (1981)
 877(h) -----M-36935, 88 I.D. 538 (1981)
 1001 et seq. -- M-36935, 88 I.D. 538 (1981)
 M-36937, 88 I.D. 813 (1981)
 1001(c) -----M-36937, 88 I.D. 813 (1981)
 1001-1025 -----55 IBLA 249, 88 I.D. 609 (1981)
 1003 -----M-36937, 88 I.D. 813 (1981)
 1004 -----53 IBLA 149 (Mar. 11, 1981)
 1004(c) -----53 IBLA 149 (Mar. 11, 1981)
 54 IBLA 329 (May 5, 1981)
 1016 -----55 IBLA 249, 88 I.D. 609 (1981)
 1020(b) -----M-36937, 88 I.D. 813 (1981)
 1025 -----M-36935, 88 I.D. 538 (1981)
 1201-1328 -----3 IBSMA 9, 88 I.D. 266 (1981)
 3 IBSMA 17, 88 I.D. 269 (1981)
 3 IBSMA 26, 88 I.D. 273 (1981)
 3 IBSMA 83, 88 I.D. 448 (1981)
 3 IBSMA 92, 88 I.D. 456 (1981)
 3 IBSMA 100, 88 I.D. 474 (1981)
 3 IBSMA 107, 88 I.D. 477 (1981)
 3 IBSMA 111, 88 I.D. 492 (1981)
 3 IBSMA 118, 88 I.D. 495 (1981)
 3 IBSMA 124, 88 I.D. 498 (1981)
 3 IBSMA 128, 88 I.D. 500 (1981)
 3 IBSMA 136, 88 I.D. 503 (1981)
 3 IBSMA 165, 88 I.D. 581 (1981)
 3 IBSMA 175, 88 I.D. 613 (1981)
 3 IBSMA 182, 88 I.D. 616 (1981)
 3 IBSMA 188, 88 I.D. 652 (1981)
 3 IBSMA 200, 88 I.D. 657 (1981)
 3 IBSMA 207, 88 I.D. 660 (1981)
 3 IBSMA 218, 88 I.D. 672 (1981)
 3 IBSMA 228, 88 I.D. 685 (1981)
 3 IBSMA 241, 88 I.D. 737 (1981)
 3 IBSMA 252, 88 I.D. 742 (1981)
 3 IBSMA 287, 88 I.D. 824 (1981)
 3 IBSMA 292, 88 I.D. 826 (1981)
 3 IBSMA 338, 88 I.D. 861 (1981)
 3 IBSMA 383, 88 I.D. 1122 (1981)
 1202 -----3 IBSMA 322, 88 I.D. 851 (1981)
 1202(e) -----3 IBSMA 241, 88 I.D. 737 (1981)
 1202(h) -----3 IBSMA 338, 88 I.D. 861 (1981)
 1202(i) -----3 IBSMA 44, 88 I.D. 394 (1981)
 1251(a)(B) ----3 IBSMA 260, 88 I.D. 745 (1981)
 1252(b) -----3 IBSMA 200, 88 I.D. 657 (1981)
 1252(c) -----3 IBSMA 200, 88 I.D. 657 (1981)
 1260(d) -----3 IBSMA 200, 88 I.D. 657 (1981)

TITLE 30: (Continued)

sec. 1265(b)(10) --- 3 IBSMA 207, 88 I.D. 660 (1981)
 1265(b)(21) --- 3 IBSMA 207, 88 I.D. 660 (1981)
 1265(b)(24) --- 3 IBSMA 207, 88 I.D. 660 (1981)
 1267(a) -----3 IBSMA 72, 88 I.D. 406 (1981)
 1267(b)(3) ----3 IBSMA 377, 88 I.D. 1112 (1981)
 1267(h) -----3 IBSMA 44, 88 I.D. 394 (1981)
 1268 -----3 IBSMA 31 (Feb. 23, 1981)
 3 IBSMA 36 (Mar. 9, 1981)
 1268(c) -----3 IBSMA 16 (Feb. 19, 1981)
 3 IBSMA 70 (Mar. 24, 1981)
 3 IBSMA 79 (Apr. 15, 1981)
 3 IBSMA 81 (Apr. 13, 1981)
 3 IBSMA 136, 88 I.D. 503 (1981)
 3 IBSMA 163 (May 29, 1981)
 3 IBSMA 215 (July 23, 1981)
 3 IBSMA 311 (Sept. 21, 1981)
 1268(h) -----3 IBSMA 136, 88 I.D. 503 (1981)
 1271 -----3 IBSMA 32, 88 I.D. 344 (1981)
 1271(a)(1) ----3 IBSMA 322, 88 I.D. 851 (1981)
 1271(a)(2) ----3 IBSMA 165, 88 I.D. 581 (1981)
 1271(a)(3) ----3 IBSMA 128, 88 I.D. 500 (1981)
 3 IBSMA 145, 88 I.D. 508 (1981)
 3 IBSMA 215 (July 23, 1981)
 3 IBSMA 218, 88 I.D. 672 (1981)
 3 IBSMA 241, 88 I.D. 737 (1981)
 3 IBSMA 287, 88 I.D. 824 (1981)
 1271(a)(5) ----3 IBSMA 100, 88 I.D. 474 (1981)
 3 IBSMA 218, 88 I.D. 672 (1981)
 3 IBSMA 241, 88 I.D. 737 (1981)
 1272(e) -----3 IBSMA 118, 88 I.D. 495 (1981)
 3 IBSMA 154, 88 I.D. 570 (1981)
 1275 -----3 IBSMA 145, 88 I.D. 508 (1981)
 1275(c) -----3 IBSMA 218, 88 I.D. 672 (1981)
 3 IBSMA 338, 88 I.D. 861 (1981)
 3 IBSMA 357, 88 I.D. 892 (1981)
 1275(c)(3) ----3 IBSMA 218, 88 I.D. 672 (1981)
 1275(e) -----3 IBSMA 44, 88 I.D. 394 (1981)
 1278(3) -----3 IBSMA 92, 88 I.D. 456 (1981)
 1291 -----3 IBSMA 44, 88 I.D. 394 (1981)
 1291(8) -----3 IBSMA 207, 88 I.D. 660 (1981)
 1291(22) -----3 IBSMA 92, 88 I.D. 456 (1981)
 1291(28) -----3 IBSMA 260, 88 I.D. 745 (1981)
 3 IBSMA 322, 88 I.D. 851 (1981)
 1291(28)(A) ---3 IBSMA 207, 88 I.D. 660 (1981)
 1291(28)(B) ---3 IBSMA 207, 88 I.D. 660 (1981)
 1292(a) -----3 IBSMA 383, 88 I.D. 1122 (1981)
 1501-1542 -----55 IBLA 249, 88 I.D. 609 (1981)

TITLE 31:

sec. 483a -----52 IBLA 105 (Jan. 12, 1981)
 55 IBLA 210 (June 18, 1981)
 M-36942, 88 I.D. 1090 (1981)
 484 -----M-36942, 88 I.D. 1090 (1981)
 627 -----M-36942, 88 I.D. 1090 (1981)
 628 -----M-36942, 88 I.D. 1090 (1981)
 686 -----M-36942, 88 I.D. 1090 (1981)
 725q -----M-36942, 88 I.D. 1090 (1981)
 725q-1 -----M-36942, 88 I.D. 1090 (1981)

TITLE 33:

sec. 591 -----55 IBLA 51 (May 29, 1981)
 1151-1175 -----3 IBSMA 383, 88 I.D. 1122 (1981)

TITLE 40:

sec. 258a -----55 IBLA 51 (May 29, 1981)
 401 -----54 IBLA 162 (Apr. 21, 1981)
 403(a) -----54 IBLA 162 (Apr. 21, 1981)
 408 -----54 IBLA 162 (Apr. 21, 1981)
 471-493 -----54 IBLA 309 (Apr. 30, 1981)
 472(g) -----54 IBLA 309 (Apr. 30, 1981)
 481 -----IBCA-1434-2-81, 88 I.D. 979
 (1981)
 483 -----6 ANCAB 203, 88 I.D. 1047 (1981)
 484 -----56 IBLA 151 (July 20, 1981)

TITLE 40: (Continued)

sec. 484(e)(1) ----53 IBLA 79 (Mar. 2, 1981)
 484(k)(2) ----53 IBLA 79 (Mar. 2, 1981)
 486 -----56 IBLA 151 (July 20, 1981)

TITLE 41:

sec. 251 et seq. -- IBCA-1434-2-81, 88 I.D. 979
 (1981)
 501 ----- M-36931, 88 I.D. 228 (1981)
 501 et seq. -- M-36931, 88 I.D. 228 (1981)
 601 et seq. -- IBCA-1420-1-81, 88 I.D. 324
 (1981)
 601(4) ----- IBCA-1471-6-81, 88 I.D. 809
 (1981)
 601-613 ----- IBCA-1434-2-81, 88 I.D. 979
 (1981)
 IBCA-1280-7-79, 88 I.D. 1065
 (1981)
 54 IBLA 309 (Apr. 30, 1981)
 602(a)(4) ----54 IBLA 309 (Apr. 30, 1981)
 604 ----- IBCA-1331-2-80 (Sept. 15, 1981)
 605 ----- IBCA-1413-12-80, 88 I.D. 722
 (1981)
 IBCA-1434-2-81, 88 I.D. 979
 (1981)
 IBCA-1280-7-79, 88 I.D. 1065
 (1981)
 605(a) ----- IBCA-1471-6-81, 88 I.D. 809
 (1981)
 607(d) ----- IBCA-1471-6-81, 88 I.D. 809
 (1981)
 611 ----- IBCA-1413-12-80, 88 I.D. 722
 (1981)
 IBCA-1434-2-81, 88 I.D. 979
 (1981)
 IBCA-1280-7-79, 88 I.D. 1065
 (1981)

TITLE 42:

sec. 4321 -----56 IBLA 284 (July 28, 1981)
 58 IBLA 332 (Oct. 16, 1981)
 4321-4347 ----55 IBLA 210 (June 18, 1981)
 4321-4361 ----56 IBLA 86, 88 I.D. 646 (1981)
 4331 -----56 IBLA 258, 88 I.D. 665 (1981)
 58 IBLA 332 (Oct. 16, 1981)
 4332 -----55 IBLA 171 (June 11, 1981)
 56 IBLA 258, 88 I.D. 665 (1981)
 58 IBLA 332 (Oct. 16, 1981)
 60 IBLA 293 (Dec. 18, 1981)
 4332(2)(B) ----60 IBLA 293 (Dec. 18, 1981)
 4332(2)(C) ----57 IBLA 79 (Aug. 21, 1981)
 60 IBLA 293 (Dec. 18, 1981)
 M-36938, 88 I.D. 903 (1981)
 4601 ----- 4 OHA 211 (Nov. 24, 1981)
 4601 et seq. -- 4 OHA 117 (Feb. 13, 1981)
 4 OHA 166 (June 8, 1981)
 4 OHA 189 (Aug. 6, 1981)
 4 OHA 196 (Oct. 13, 1981)
 4601(6) ----- 4 OHA 166 (June 8, 1981)
 4601(7)(A) ---- 4 OHA 192 (Aug. 20, 1981)
 4601(7)(B) ---- 4 OHA 192 (Aug. 20, 1981)
 4602(a) ----- 4 OHA 107 (Jan. 23, 1981)
 4 OHA 160 (Apr. 29, 1981)
 4622 ----- 4 OHA 173 (July 13, 1981)
 4 OHA 196 (Oct. 13, 1981)
 4622(a) ----- 4 OHA 192 (Aug. 20, 1981)
 4622(a)(1) ---- 4 OHA 117 (Feb. 13, 1981)
 4622(c) ----- 4 OHA 192 (Aug. 20, 1981)
 4623 ----- 4 OHA 123 (Feb. 20, 1981)
 4 OHA 184 (July 30, 1981)
 4623(a) ----- 4 OHA 107 (Jan. 23, 1981)
 4 OHA 143 (Apr. 9, 1981)
 4 OHA 160 (Apr. 29, 1981)
 4 OHA 199 (Oct. 22, 1981)
 4623(a)(1)(A) - 4 OHA 107 (Jan. 23, 1981)
 4623(a)(1)(B) - 4 OHA 208 (Nov. 12, 1981)

TITLE 42: (Continued)

sec. 4623(a)(1)(C) - 4 OHA 199 (Oct. 22, 1981)
 4624(1) ----- 4 OHA 101 (Jan. 8, 1981)
 4633 ----- 4 OHA 101 (Jan. 8, 1981)
 4 OHA 107 (Jan. 23, 1981)
 4 OHA 156 (Apr. 17, 1981)
 4 OHA 160 (Apr. 29, 1981)
 4651 ----- 4 OHA 107 (Jan. 23, 1981)
 4651(2) ----- 4 OHA 208 (Nov. 12, 1981)
 4651(5) ----- 4 OHA 107 (Jan. 23, 1981)
 4653 ----- 4 OHA 177 (July 14, 1981)
 4 OHA 208 (Nov. 12, 1981)
 4653(3) ----- 4 OHA 153 (Apr. 13, 1981)
 6502 -----57 IBLA 71 (Aug. 20, 1981)
 7152(b)(5) ----60 IBLA 331 (Dec. 22, 1981)

TITLE 43:

sec. 2 ----- M-36910 (Supp.), 88 I.D. 909
 (1981)
 4 -----59 IBLA 170 (Oct. 26, 1981)
 6(b) -----59 IBLA 364 (Nov. 9, 1981)
 95-98(a) ---- M-36942, 88 I.D. 1090 (1981)
 141 -----52 IBLA 87, 88 I.D. 31 (1981)
 55 IBLA 20 (May 26, 1981)
 141-143 -----52 IBLA 87, 88 I.D. 31 (1981)
 53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 23 (May 26, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 142 -----52 IBLA 87, 88 I.D. 31 (1981)
 55 IBLA 20 (May 26, 1981)
 58 IBLA 188 (Sept. 28, 1981)
 154 -----53 IBLA 42 (Feb. 26, 1981)
 54 IBLA 8 (Apr. 6, 1981)
 158 -----54 IBLA 38, 88 I.D. 437 (1981)
 161 -----52 IBLA 198 (Jan. 26, 1981)
 189 -----58 IBLA 21 (Sept. 16, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 190 -----58 IBLA 21 (Sept. 16, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 211(b) -----57 IBLA 333 (Sept. 1, 1981)
 270 -----57 IBLA 95 (Aug. 25, 1981)
 270-1 -----54 IBLA 346 (May 12, 1981)
 55 IBLA 305 (June 25, 1981)
 270-1-270-3 -- 5 AN CAB 195 (Mar. 31, 1981)
 52 IBLA 222 (Jan. 30, 1981)
 53 IBLA 208, 88 I.D. 373 (1981)
 53 IBLA 306 (Mar. 25, 1981)
 54 IBLA 295 (Apr. 29, 1981)
 54 IBLA 306 (Apr. 29, 1981)
 54 IBLA 346 (May 12, 1981)
 55 IBLA 305 (June 25, 1981)
 56 IBLA 69 (July 10, 1981)
 56 IBLA 242, 88 I.D. 663 (1981)
 59 IBLA 345 (Nov. 5, 1981)
 59 IBLA 361 (Nov. 9, 1981)
 59 IBLA 384 (Nov. 9, 1981)
 60 IBLA 14 (Nov. 16, 1981)
 60 IBLA 101 (Nov. 19, 1981)
 60 IBLA 214 (Nov. 27, 1981)
 60 IBLA 252 (Dec. 4, 1981)
 60 IBLA 394 (Dec. 23, 1981)
 60 IBLA 399 (Dec. 28, 1981)
 61 IBLA 1 (Dec. 28, 1981)
 270-2 -----53 IBLA 208, 88 I.D. 373 (1981)
 60 IBLA 14 (Nov. 16, 1981)
 270-3 -----54 IBLA 346 (May 12, 1981)
 60 IBLA 14 (Nov. 16, 1981)
 279 -----59 IBLA 337 (Nov. 5, 1981)
 291 -----59 IBLA 155 (Oct. 26, 1981)
 291 et seq. -- M-36937, 88 I.D. 813 (1981)
 291-301 -----55 IBLA 257 (June 22, 1981)
 59 IBLA 155 (Oct. 26, 1981)
 299 -----52 IBLA 390 (Feb. 24, 1981)
 59 IBLA 155 (Oct. 26, 1981)
 M-36937, 88 I.D. 813 (1981)
 315 -----52 IBLA 52 (Jan. 6, 1981)

TITLE 43: (Continued)

53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 208, 88 I.D. 373 (1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 23 (May 26, 1981)
 55 IBLA 68 (June 1, 1981)
 55 IBLA 131 (June 3, 1981)
 55 IBLA 332 (June 26, 1981)
 58 IBLA 21 (Sept. 16, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 59 IBLA 182 (Oct. 27, 1981)
 315 et seq. -- M-36914 (Supp. I), 88 I.D. 1055 (1981)
 315-315n -----53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 23 (May 26, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 315a -----55 IBLA 68 (June 1, 1981)
 315a et seq. - M-36914 (Supp.), 88 I.D. 253 (1981)
 315a-315r -----55 IBLA 68 (June 1, 1981)
 315b -----56 IBLA 258, 88 I.D. 665 (1981)
 315f -----53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 23 (May 26, 1981)
 58 IBLA 21 (Sept. 16, 1981)
 58 IBLA 213 (Sept. 29, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 59 IBLA 170 (Oct. 26, 1981)
 59 IBLA 182 (Oct. 27, 1981)
 315g -----52 IBLA 156, 88 I.D. 232 (1981)
 52 IBLA 246 (Feb. 6, 1981)
 53 IBLA 153 (Mar. 12, 1981)
 58 IBLA 115 (Sept. 24, 1981)
 58 IBLA 329 (Oct. 16, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 315g(c) -----52 IBLA 156, 88 I.D. 232 (1981)
 53 IBLA 153 (Mar. 12, 1981)
 315g(d) -----61 IBLA 8 (Dec. 29, 1981)
 315g-1 -----53 IBLA 153 (Mar. 12, 1981)
 315p -----53 IBLA 153 (Mar. 12, 1981)
 321 -----59 IBLA 276 (Oct. 29, 1981)
 M-36914 (Supp.), 88 I.D. 253 (1981)
 M-36914 (Supp. I), 88 I.D. 1055 (1981)
 321-323 -----57 IBLA 370 (Sept. 8, 1981)
 321-324 -----55 IBLA 59 (May 29, 1981)
 321-339 -----55 IBLA 59 (May 29, 1981)
 55 IBLA 83 (June 1, 1981)
 327 -----55 IBLA 83 (June 1, 1981)
 329 -----55 IBLA 83 (June 1, 1981)
 372 -----M-36914 (Supp. I), 88 I.D. 1055 (1981)
 383 -----M-36914 (Supp. I), 88 I.D. 1055 (1981)
 416 -----52 IBLA 56 (Jan. 6, 1981)
 54 IBLA 8 (Apr. 6, 1981)
 54 IBLA 103 (Apr. 15, 1981)
 55 IBLA 42 (May 28, 1981)
 55 IBLA 59 (May 29, 1981)
 57 IBLA 370 (Sept. 8, 1981)
 4 OHA 166 (June 8, 1981)
 462 -----4 OHA 204 (Oct. 26, 1981)
 485g -----4 OHA 204 (Oct. 26, 1981)
 492 -----4 OHA 204 (Oct. 26, 1981)
 661 -----5 ANCAB 174, 88 I.D. 352 (1981)
 M-36914 (Supp.), 88 I.D. 253 (1981)
 M-36914 (Supp. I), 88 I.D. 1055 (1981)
 666 -----M-36914 (Supp. I), 88 I.D. 1055 (1981)
 682(a)-
 682(c) -----57 IBLA 74 (Aug. 20, 1981)
 682a -----54 IBLA 281 (Apr. 28, 1981)
 687a -----55 IBLA 223 (June 18, 1981)

TITLE 43: (Continued)

57 IBLA 95 (Aug. 25, 1981)
 59 IBLA 337 (Nov. 5, 1981)
 687a-1 -----53 IBLA 208, 88 I.D. 373 (1981)
 55 IBLA 223 (June 18, 1981)
 57 IBLA 95 (Aug. 25, 1981)
 752 -----58 IBLA 52 (Sept. 21, 1981)
 851 -----58 IBLA 213 (Sept. 29, 1981)
 869 -----58 IBLA 21 (Sept. 16, 1981)
 59 IBLA 320 (Nov. 4, 1981)
 898 -----54 IBLA 174 (Apr. 21, 1981)
 932 -----53 IBLA 159 (Mar. 12, 1981)
 55 IBLA 151 (June 8, 1981)
 55 IBLA 360 (June 26, 1981)
 945 -----5 ANCAB 354 (July 24, 1981)
 959 -----5 ANCAB 174, 88 I.D. 352 (1981)
 56 IBLA 139 (July 20, 1981)
 961 -----55 IBLA 218 (June 18, 1981)
 55 IBLA 390 (June 30, 1981)
 56 IBLA 167 (July 20, 1981)
 57 IBLA 215 (Aug. 27, 1981)
 60 IBLA 163 (Nov. 24, 1981)
 60 IBLA 221 (Nov. 30, 1981)
 971 -----M-36937, 88 I.D. 813 (1981)
 975(d) -----5 ANCAB 354 (July 24, 1981)
 1068 -----52 IBLA 141 (Jan. 16, 1981)
 52 IBLA 210 (Jan. 30, 1981)
 52 IBLA 248 (Feb. 6, 1981)
 53 IBLA 188 (Mar. 17, 1981)
 55 IBLA 8 (May 26, 1981)
 55 IBLA 370 (June 26, 1981)
 56 IBLA 145 (July 20, 1981)
 58 IBLA 14 (Sept. 16, 1981)
 1068-1068b -----52 IBLA 210 (Jan. 30, 1981)
 55 IBLA 8 (May 26, 1981)
 55 IBLA 296 (June 26, 1981)
 1131(c) -----54 IBLA 215 (Apr. 23, 1981)
 1161-1163 -----57 IBLA 95 (Aug. 25, 1981)
 1165 -----55 IBLA 83 (June 1, 1981)
 59 IBLA 337 (Nov. 5, 1981)
 1171 -----53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 23 (May 26, 1981)
 58 IBLA 94 (Sept. 24, 1981)
 58 IBLA 98 (Sept. 24, 1981)
 58 IBLA 103 (Sept. 24, 1981)
 58 IBLA 108 (Sept. 24, 1981)
 58 IBLA 202 (Sept. 29, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 59 IBLA 182 (Oct. 27, 1981)
 1171(a) -----60 IBLA 305 (Dec. 18, 1981)
 1181a -----54 IBLA 215 (Apr. 23, 1981)
 55 IBLA 171 (June 11, 1981)
 60 IBLA 1 (Nov. 12, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 1181a-1181d -----61 IBLA 8 (Dec. 29, 1981)
 1181a-1181f -----61 IBLA 8 (Dec. 29, 1981)
 1181a-1181j -----60 IBLA 1 (Nov. 12, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 1301(a) -----57 IBLA 71 (Aug. 20, 1981)
 1331(k) -----M-36925, 88 I.D. 699 (1981)
 1331(l) -----M-36925, 88 I.D. 699 (1981)
 1331-1343 -----52 IBLA 15, 88 I.D. 1 (1981)
 1337 -----57 IBLA 71 (Aug. 20, 1981)
 M-36942, 88 I.D. 1090 (1981)
 1338 -----M-36942, 88 I.D. 1090 (1981)
 1339(a) -----52 IBLA 74 (Jan. 9, 1981)
 M-36942, 88 I.D. 1090 (1981)
 1339(b) -----52 IBLA 74 (Jan. 9, 1981)
 1344 -----M-36932, 88 I.D. 20 (1981)
 1344(a) -----M-36932, 88 I.D. 20 (1981)
 1344(e) -----M-36932, 88 I.D. 20 (1981)
 1344(g) -----M-36925, 88 I.D. 699 (1981)
 1351(a)(1) -----M-36925, 88 I.D. 699 (1981)
 1351(a)(3) -----M-36925, 88 I.D. 699 (1981)
 1352(c) -----M-36925, 88 I.D. 699 (1981)
 1353 -----M-36942, 88 I.D. 1090 (1981)
 1353(b) -----61 IBLA 84 (Dec. 31, 1981)

TITLE 43: (Continued)

sec. 1353(b)(2) ----57 IBLA 53 (Aug. 17, 1981)
 60 IBLA 331 (Dec. 22, 1981)
 61 IBLA 84 (Dec. 31, 1981)
 1364 -----52 IBLA 156, 88 I.D. 232 (1981)
 61 IBLA 8 (Dec. 29, 1981)
 1374 ----- M-36942, 88 I.D. 1090 (1981)
 1411 -----55 IBLA 131 (June 3, 1981)
 55 IBLA 332 (June 26, 1981)
 56 IBLA 258, 88 I.D. 665 (1981)
 1411-1413 ----53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 55 IBLA 23 (May 26, 1981)
 58 IBLA 94 (Sept. 24, 1981)
 58 IBLA 98 (Sept. 24, 1981)
 58 IBLA 103 (Sept. 24, 1981)
 58 IBLA 202 (Sept. 29, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 59 IBLA 182 (Oct. 27, 1981)
 1411-1418 ----53 IBLA 23 (Feb. 26, 1981)
 53 IBLA 279 (Mar. 24, 1981)
 58 IBLA 94 (Sept. 24, 1981)
 58 IBLA 98 (Sept. 24, 1981)
 58 IBLA 103 (Sept. 24, 1981)
 58 IBLA 108 (Sept. 24, 1981)
 58 IBLA 202 (Sept. 29, 1981)
 58 IBLA 260 (Oct. 6, 1981)
 1421-1427 ----55 IBLA 23 (May 26, 1981)
 58 IBLA 103 (Sept. 24, 1981)
 58 IBLA 108 (Sept. 24, 1981)
 58 IBLA 202 (Sept. 29, 1981)
 1431-1435 ----52 IBLA 227 (Jan. 30, 1981)
 55 IBLA 157 (June 9, 1981)
 1432 -----52 IBLA 227 (Jan. 30, 1981)
 1435 -----52 IBLA 227 (Jan. 30, 1981)
 1464 -----53 IBLA 101, 88 I.D. 345 (1981)
 1601 -----5 ANCAB 147, 88 I.D. 14 (1981)
 6 ANCAB 1, 88 I.D. 711 (1981)
 6 ANCAB 37, 88 I.D. 757 (1981)
 6 ANCAB 45 (Aug. 24, 1981)
 6 ANCAB 50 (Aug. 24, 1981)
 6 ANCAB 55 (Aug. 24, 1981)
 6 ANCAB 65, 88 I.D. 760 (1981)
 6 ANCAB 111 (Sept. 29, 1981)
 6 ANCAB 129 (Oct. 22, 1981)
 6 ANCAB 157, 88 I.D. 1028 (1981)
 55 IBLA 223 (June 18, 1981)
 1601 et seq. -- 6 ANCAB 65, 88 I.D. 760 (1981)
 1601(a) ----- 9 IBIA 3, 88 I.D. 575 (1981)
 1601(b) ----- 8 IBIA 218, 88 I.D. 261 (1981)
 1601(c) ----- 8 IBIA 218, 88 I.D. 261 (1981)
 1601-1628 ----5 ANCAB 174, 88 I.D. 352 (1981)
 5 ANCAB 197, 88 I.D. 442 (1981)
 5 ANCAB 212 (Apr. 15, 1981)
 5 ANCAB 220 (Apr. 17, 1981)
 5 ANCAB 224, 88 I.D. 460 (1981)
 5 ANCAB 257 (Apr. 21, 1981)
 5 ANCAB 260, 88 I.D. 511 (1981)
 5 ANCAB 265, 88 I.D. 513 (1981)
 5 ANCAB 279 (Apr. 30, 1981)
 5 ANCAB 281 (May 1, 1981)
 5 ANCAB 284 (May 4, 1981)
 5 ANCAB 290 (May 11, 1981)
 5 ANCAB 297 (May 13, 1981)
 5 ANCAB 299 (May 13, 1981)
 5 ANCAB 302 (May 29, 1981)
 5 ANCAB 304 (May 29, 1981)
 5 ANCAB 307, 88 I.D. 629 (1981)
 5 ANCAB 324, 88 I.D. 636 (1981)
 5 ANCAB 343 (June 26, 1981)
 5 ANCAB 354 (July 24, 1981)
 5 ANCAB 368 (July 27, 1981)
 5 ANCAB 373 (July 28, 1981)
 6 ANCAB 1, 88 I.D. 711 (1981)
 6 ANCAB 17, 88 I.D. 718 (1981)
 6 ANCAB 27 (Aug. 19, 1981)
 6 ANCAB 32 (Aug. 19, 1981)
 6 ANCAB 37, 88 I.D. 757 (1981)

TITLE 43: (Continued)

6 ANCAB 45 (Aug. 24, 1981)
 6 ANCAB 50 (Aug. 24, 1981)
 6 ANCAB 55 (Aug. 24, 1981)
 6 ANCAB 60 (Aug. 24, 1981)
 6 ANCAB 65, 88 I.D. 760 (1981)
 6 ANCAB 95, 88 I.D. 886 (1981)
 6 ANCAB 111 (Sept. 29, 1981)
 6 ANCAB 122 (Oct. 6, 1981)
 6 ANCAB 129 (Oct. 22, 1981)
 6 ANCAB 138 (Oct. 30, 1981)
 6 ANCAB 143 (Oct. 30, 1981)
 6 ANCAB 147 (Nov. 27, 1981)
 6 ANCAB 152, 88 I.D. 1027 (1981)
 6 ANCAB 157, 88 I.D. 1028 (1981)
 6 ANCAB 181, 88 I.D. 1039 (1981)
 6 ANCAB 203, 88 I.D. 1047 (1981)
 6 ANCAB 219, 88 I.D. 1086 (1981)
 6 ANCAB 242, 88 I.D. 1105 (1981)
 8 IBIA 218, 88 I.D. 261 (1981)
 9 IBIA 3, 88 I.D. 575 (1981)
 9 IBIA 70, 88 I.D. 822 (1981)
 55 IBLA 305 (June 25, 1981)
 1602(b) ----- 8 IBIA 218, 88 I.D. 261 (1981)
 9 IBIA 3, 88 I.D. 575 (1981)
 1603 -----56 IBLA 69 (July 10, 1981)
 1604 ----- 8 IBIA 218, 88 I.D. 261 (1981)
 1608(c) -----58 IBLA 118 (Sept. 24, 1981)
 1608(g) -----58 IBLA 118 (Sept. 24, 1981)
 1610 ----- 6 ANCAB 157, 88 I.D. 1028 (1981)
 1610(a)(1)(A) -53 IBLA 306 (Mar. 25, 1981)
 1611 ----- 6 ANCAB 37, 88 I.D. 757 (1981)
 1611(a) ----- 5 ANCAB 147, 88 I.D. 14 (1981)
 6 ANCAB 1, 88 I.D. 711 (1981)
 1613 -----54 IBLA 165 (Apr. 21, 1981)
 1613(c) -----55 IBLA 223 (June 18, 1981)
 1613(g) ----- 5 ANCAB 174, 88 I.D. 352 (1981)
 5 ANCAB 307, 88 I.D. 629 (1981)
 1613(h)(8) ---- 6 ANCAB 65, 88 I.D. 760 (1981)
 6 ANCAB 111 (Sept. 29, 1981)
 1616(b)(2) ---- 6 ANCAB 157, 88 I.D. 1028 (1981)
 1617 ----- 5 ANCAB 195 (Mar. 31, 1981)
 8 IBIA 218, 88 I.D. 261 (1981)
 9 IBIA 3, 88 I.D. 575 (1981)
 52 IBLA 222 (Jan. 30, 1981)
 53 IBLA 208, 88 I.D. 373 (1981)
 53 IBLA 306 (Mar. 25, 1981)
 54 IBLA 295 (Apr. 29, 1981)
 54 IBLA 306 (Apr. 29, 1981)
 54 IBLA 346 (May 12, 1981)
 55 IBLA 305 (June 25, 1981)
 56 IBLA 69 (July 10, 1981)
 56 IBLA 242, 88 I.D. 663 (1981)
 59 IBLA 345 (Nov. 5, 1981)
 59 IBLA 361 (Nov. 9, 1981)
 59 IBLA 384 (Nov. 9, 1981)
 60 IBLA 101 (Nov. 19, 1981)
 60 IBLA 214 (Nov. 27, 1981)
 60 IBLA 252 (Dec. 4, 1981)
 60 IBLA 394 (Dec. 23, 1981)
 60 IBLA 399 (Dec. 28, 1981)
 61 IBLA 1 (Dec. 28, 1981)
 1617(a) ----- 8 IBIA 218, 88 I.D. 261 (1981)
 54 IBLA 306 (Apr. 28, 1981)
 56 IBLA 69 (July 10, 1981)
 56 IBLA 242, 88 I.D. 663 (1981)
 59 IBLA 345 (Nov. 5, 1981)
 59 IBLA 384 (Nov. 9, 1981)
 60 IBLA 14 (Nov. 16, 1981)
 60 IBLA 101 (Nov. 19, 1981)
 60 IBLA 214 (Nov. 27, 1981)
 60 IBLA 252 (Dec. 4, 1981)
 60 IBLA 394 (Dec. 23, 1981)
 61 IBLA 1 (Dec. 28, 1981)
 1618 ----- 9 IBIA 3, 88 I.D. 575 (1981)
 1618(a) ----- 8 IBIA 218, 88 I.D. 261 (1981)
 9 IBIA 3, 88 I.D. 575 (1981)
 1618(b) ----- 8 IBIA 218, 88 I.D. 261 (1981)

TITLE 43: (Continued)

sec. 1621(i) ----- 5 AN CAB 174, 88 I.D. 352 (1981)
 1621(k) ----- 6 AN CAB 152, 88 I.D. 1027 (1981)
 1634 -----55 IBLA 305 (June 25, 1981)
 1651-1655 -----52 IBLA 222 (Jan. 30, 1981)
 1701 -----52 IBLA 56 (Jan. 6, 1981)
 53 IBLA 136 (Mar. 9, 1981)
 55 IBLA 151 (June 8, 1981)
 55 IBLA 390 (June 30, 1981)
 56 IBLA 167 (July 20, 1981)
 57 IBLA 95 (Aug. 25, 1981)
 57 IBLA 221 (Aug. 27, 1981)
 58 IBLA 294 (Oct. 14, 1981)
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 M-36910 (Supp.), 88 I.D. 909
 (1981)
 1701 et seq. --60 IBLA 240 (Dec. 4, 1981)
 M-36914 (Supp.), 88 I.D. 253
 (1981)
 M-36914 (Supp. I), 88 I.D. 1055
 (1981)
 1701(a)(5) -----58 IBLA 175, 88 I.D. 879 (1981)
 1701(a)(6) -----60 IBLA 240 (Dec. 4, 1981)
 1701(a)(7) -----52 IBLA 280, 88 I.D. 258 (1981)
 56 IBLA 258, 88 I.D. 665 (1981)
 61 IBLA 43 (Dec. 31, 1981)
 1701(g) ----- M-36914 (Supp.), 88 I.D. 253
 (1981)
 1701-1782 -----53 IBLA 153 (Mar. 12, 1981)
 54 IBLA 309 (Apr. 30, 1981)
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 56 IBLA 167 (July 20, 1981)
 56 IBLA 258, 88 I.D. 665 (1981)
 57 IBLA 215 (Aug. 27, 1981)
 57 IBLA 300 (Aug. 31, 1981)
 60 IBLA 153 (Nov. 24, 1981)
 60 IBLA 221 (Nov. 30, 1981)
 1702 -----59 IBLA 291 (Oct. 30, 1981)
 60 IBLA 1 (Nov. 12, 1981)
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 1702(c) -----56 IBLA 258, 88 I.D. 665 (1981)
 1702(e) -----60 IBLA 305 (Dec. 18, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 1702(i) -----60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)
 1702(j) -----54 IBLA 38, 88 I.D. 437 (1981)
 59 IBLA 348 (Nov. 5, 1981)
 1711(a) -----54 IBLA 215 (Apr. 23, 1981)
 56 IBLA 206 (July 22, 1981)
 1712 -----60 IBLA 305 (Dec. 18, 1981)
 M-36910 (Supp.), 88 I.D. 909
 (1981)
 1712(c)(1) -----54 IBLA 309 (Apr. 30, 1981)
 1714 -----53 IBLA 251 (Mar. 19, 1981)
 54 IBLA 103 (Apr. 15, 1981)
 57 IBLA 370 (Sept. 8, 1981)
 58 IBLA 329 (Oct. 16, 1981)
 1714(a) -----61 IBLA 8 (Dec. 31, 1981)
 1714(i) -----61 IBLA 68 (Dec. 31, 1981)
 1714(l) -----52 IBLA 56 (Jan. 6, 1981)
 1715 -----52 IBLA 302 (Feb. 10, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 1715(c) -----61 IBLA 8 (Dec. 29, 1981)
 1716 -----53 IBLA 153 (Mar. 12, 1981)
 58 IBLA 329 (Oct. 16, 1981)
 58 IBLA 390, 88 I.D. 918 (1981)
 61 IBLA 8 (Dec. 29, 1981)
 1716(a) -----52 IBLA 156, 88 I.D. 232 (1981)
 1719 -----54 IBLA 137 (Apr. 17, 1981)
 55 IBLA 296 (June 26, 1981)
 58 IBLA 390, 88 I.D. 918 (1981)
 61 IBLA 80 (Dec. 31, 1981)
 1719(b) -----53 IBLA 362 (Mar. 30, 1981)
 55 IBLA 296 (June 26, 1981)

TITLE 43: (Continued)

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 54 IBLA 137 (Apr. 17, 1981)
 55 IBLA 296 (June 26, 1981)
 1722 -----52 IBLA 227 (Jan. 30, 1981)
 55 IBLA 157 (June 9, 1981)
 1722(a) -----52 IBLA 227 (Jan. 30, 1981)
 1731 -----60 IBLA 1 (Nov. 12, 1981)
 1732 -----55 IBLA 360 (June 26, 1981)
 57 IBLA 74 (Aug. 20, 1981)
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 1732(a) -----60 IBLA 1 (Nov. 12, 1981)
 1732(b) -----52 IBLA 80 (Jan. 9, 1981)
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 60 IBLA 341 (Dec. 22, 1981)
 M-36910 (Supp.), 88 I.D. 909
 (1981)
 1734 -----52 IBLA 134 (Jan. 16, 1981)
 55 IBLA 210 (June 18, 1981)
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 1734(a) -----52 IBLA 105 (Jan. 12, 1981)
 60 IBLA 29 (Nov. 16, 1981)
 1734(c) ----- M-36942, 88 I.D. 1090 (1981)
 1737(a) -----60 IBLA 293 (Dec. 18, 1981)
 1737(c) ----- IBCA-1471-6-81, 88 I.D. 809
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 1744 ----- 6 AN CAB 111 (Sept. 29, 1981)
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TITLE 43: (Continued)

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TITLE 43: (Continued)

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TITLE 43: (Continued)

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 58 IBLA 152, 88 I.D. 873 (1981)
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TITLE 43: (Continued)

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TITLE 43: (Continued)

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TITLE 43: (Continued)

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TITLE 43: (Continued)

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53 IBLA 136 (Mar. 9, 1981)
53 IBLA 377 (Mar. 31, 1981)
54 IBLA 237 (Apr. 27, 1981)
54 IBLA 362 (May 18, 1981)
55 IBLA 105 (June 1, 1981)
55 IBLA 263 (June 25, 1981)
56 IBLA 78, 88 I.D. 643 (1981)
56 IBLA 131 (July 16, 1981)
56 IBLA 155 (July 20, 1981)
56 IBLA 217 (July 22, 1981)
56 IBLA 327 (July 30, 1981)
56 IBLA 367 (Aug. 3, 1981)
57 IBLA 5 (Aug. 5, 1981)
57 IBLA 23 (Aug. 6, 1981)
57 IBLA 40 (Aug. 10, 1981)
57 IBLA 120 (Aug. 25, 1981)
57 IBLA 152 (Aug. 25, 1981)
57 IBLA 157 (Aug. 25, 1981)
57 IBLA 266 (Aug. 28, 1981)
57 IBLA 268 (Aug. 31, 1981)
57 IBLA 297 (Aug. 31, 1981)
57 IBLA 330 (Sept. 1, 1981)
57 IBLA 336 (Sept. 1, 1981)
57 IBLA 342 (Sept. 3, 1981)
58 IBLA 10 (Sept. 16, 1981)
58 IBLA 29 (Sept. 16, 1981)
58 IBLA 59 (Sept. 21, 1981)
58 IBLA 75 (Sept. 22, 1981)
58 IBLA 137 (Sept. 25, 1981)
58 IBLA 192 (Sept. 29, 1981)
58 IBLA 194 (Sept. 29, 1981)
58 IBLA 239 (Oct. 6, 1981)
58 IBLA 355 (Oct. 20, 1981)
58 IBLA 377 (Oct. 21, 1981)
58 IBLA 381 (Oct. 21, 1981)
59 IBLA 150 (Oct. 26, 1981)
59 IBLA 247 (Oct. 29, 1981)
59 IBLA 257 (Oct. 29, 1981)
60 IBLA 10 (Nov. 13, 1981)
60 IBLA 29 (Nov. 16, 1981)
60 IBLA 59 (Nov. 18, 1981)
60 IBLA 75 (Nov. 19, 1981)
60 IBLA 197 (Nov. 27, 1981)
60 IBLA 229 (Dec. 4, 1981)
60 IBLA 370 (Dec. 22, 1981)
61 IBLA 8 (Dec. 29, 1981)
1744(c) ----- 52 IBLA 9 (Jan. 5, 1981)
52 IBLA 44 (Jan. 6, 1981)
52 IBLA 131 (Jan. 16, 1981)
52 IBLA 149 (Jan. 16, 1981)
52 IBLA 214 (Jan. 30, 1981)
52 IBLA 233 (Feb. 3, 1981)
52 IBLA 243 (Feb. 6, 1981)
52 IBLA 270 (Feb. 6, 1981)
52 IBLA 299 (Feb. 10, 1981)
52 IBLA 305 (Feb. 10, 1981)
52 IBLA 366 (Feb. 19, 1981)
52 IBLA 375 (Feb. 19, 1981)
52 IBLA 393 (Feb. 24, 1981)
53 IBLA 21 (Feb. 26, 1981)
53 IBLA 34 (Feb. 26, 1981)
53 IBLA 40 (Feb. 26, 1981)
53 IBLA 106 (Mar. 4, 1981)
53 IBLA 136 (Mar. 9, 1981)
53 IBLA 171 (Mar. 16, 1981)
53 IBLA 200 (Mar. 17, 1981)
53 IBLA 313 (Mar. 25, 1981)
54 IBLA 54 (Apr. 9, 1981)
54 IBLA 56 (Apr. 9, 1981)
54 IBLA 100 (Apr. 15, 1981)
54 IBLA 108 (Apr. 15, 1981)
54 IBLA 121 (Apr. 16, 1981)
54 IBLA 134 (Apr. 17, 1981)

TITLE 43: (Continued)

54 IBLA 139 (Apr. 17, 1981)
54 IBLA 144 (Apr. 17, 1981)
54 IBLA 155 (Apr. 21, 1981)
54 IBLA 165 (Apr. 21, 1981)
54 IBLA 184 (Apr. 22, 1981)
54 IBLA 221 (Apr. 23, 1981)
54 IBLA 239 (Apr. 27, 1981)
54 IBLA 303 (Apr. 29, 1981)
54 IBLA 337 (May 5, 1981)
54 IBLA 343 (May 7, 1981)
54 IBLA 352 (May 12, 1981)
55 IBLA 5 (May 26, 1981)
55 IBLA 28 (May 27, 1981)
55 IBLA 45 (May 29, 1981)
55 IBLA 47 (May 29, 1981)
55 IBLA 49 (May 29, 1981)
55 IBLA 55 (May 29, 1981)
55 IBLA 77 (June 1, 1981)
55 IBLA 110 (June 1, 1981)
55 IBLA 136 (June 4, 1981)
55 IBLA 145 (June 8, 1981)
55 IBLA 185 (June 16, 1981)
55 IBLA 193 (June 16, 1981)
55 IBLA 260 (June 25, 1981)
55 IBLA 263 (June 25, 1981)
55 IBLA 312 (June 26, 1981)
56 IBLA 26 (July 8, 1981)
56 IBLA 43 (July 8, 1981)
56 IBLA 55 (July 10, 1981)
56 IBLA 109 (July 16, 1981)
56 IBLA 148 (July 20, 1981)
56 IBLA 155 (July 20, 1981)
56 IBLA 187 (July 20, 1981)
56 IBLA 190 (July 20, 1981)
56 IBLA 236 (July 22, 1981)
56 IBLA 276 (July 28, 1981)
56 IBLA 280 (July 28, 1981)
56 IBLA 312 (July 29, 1981)
56 IBLA 315 (July 29, 1981)
56 IBLA 334 (July 30, 1981)
56 IBLA 354 (Aug. 3, 1981)
56 IBLA 361 (Aug. 3, 1981)
56 IBLA 375 (Aug. 3, 1981)
57 IBLA 5 (Aug. 5, 1981)
57 IBLA 15 (Aug. 6, 1981)
57 IBLA 29 (Aug. 6, 1981)
57 IBLA 35 (Aug. 10, 1981)
57 IBLA 51 (Aug. 17, 1981)
57 IBLA 60 (Aug. 17, 1981)
57 IBLA 120 (Aug. 25, 1981)
57 IBLA 221 (Aug. 27, 1981)
57 IBLA 268 (Aug. 31, 1981)
57 IBLA 271 (Aug. 31, 1981)
57 IBLA 281 (Aug. 31, 1981)
57 IBLA 297 (Aug. 31, 1981)
57 IBLA 300 (Aug. 31, 1981)
57 IBLA 330 (Sept. 1, 1981)
57 IBLA 339 (Sept. 1, 1981)
57 IBLA 342 (Sept. 3, 1981)
57 IBLA 346 (Sept. 3, 1981)
57 IBLA 351 (Sept. 8, 1981)
57 IBLA 390 (Sept. 10, 1981)
58 IBLA 29 (Sept. 16, 1981)
58 IBLA 35 (Sept. 17, 1981)
58 IBLA 42 (Sept. 17, 1981)
58 IBLA 62 (Sept. 21, 1981)
58 IBLA 64 (Sept. 22, 1981)
58 IBLA 75 (Sept. 22, 1981)
58 IBLA 88 (Sept. 24, 1981)
58 IBLA 121 (Sept. 24, 1981)
58 IBLA 134 (Sept. 24, 1981)
58 IBLA 137 (Sept. 25, 1981)
58 IBLA 139 (Sept. 25, 1981)
58 IBLA 142 (Sept. 25, 1981)
58 IBLA 163 (Sept. 28, 1981)
58 IBLA 192 (Sept. 29, 1981)
58 IBLA 194 (Sept. 29, 1981)

United States Codes

TITLE 43: (Continued)

58 IBLA 197 (Sept. 29, 1981)
 58 IBLA 211 (Sept. 29, 1981)
 58 IBLA 230 (Oct. 6, 1981)
 58 IBLA 239 (Oct. 6, 1981)
 58 IBLA 243 (Oct. 6, 1981)
 58 IBLA 246 (Oct. 6, 1981)
 58 IBLA 251 (Oct. 6, 1981)
 58 IBLA 254 (Oct. 6, 1981)
 58 IBLA 257 (Oct. 6, 1981)
 58 IBLA 265 (Oct. 7, 1981)
 58 IBLA 308 (Oct. 16, 1981)
 58 IBLA 319 (Oct. 16, 1981)
 58 IBLA 325 (Oct. 16, 1981)
 58 IBLA 337 (Oct. 19, 1981)
 58 IBLA 346 (Oct. 19, 1981)
 58 IBLA 350 (Oct. 19, 1981)
 58 IBLA 355 (Oct. 20, 1981)
 58 IBLA 358 (Oct. 20, 1981)
 58 IBLA 369 (Oct. 20, 1981)
 58 IBLA 372 (Oct. 20, 1981)
 58 IBLA 381 (Oct. 21, 1981)
 58 IBLA 403 (Oct. 21, 1981)
 59 IBLA 1, 88 I.D. 925 (1981)
 59 IBLA 112 (Oct. 26, 1981)
 59 IBLA 127 (Oct. 26, 1981)
 59 IBLA 150 (Oct. 26, 1981)
 59 IBLA 167 (Oct. 26, 1981)
 59 IBLA 199 (Oct. 27, 1981)
 59 IBLA 220 (Oct. 28, 1981)
 59 IBLA 223 (Oct. 28, 1981)
 59 IBLA 235 (Oct. 28, 1981)
 59 IBLA 280 (Oct. 30, 1981)
 59 IBLA 283 (Oct. 30, 1981)
 59 IBLA 311 (Nov. 4, 1981)
 59 IBLA 323 (Nov. 5, 1981)
 60 IBLA 6 (Nov. 12, 1981)
 60 IBLA 10 (Nov. 13, 1981)
 60 IBLA 44 (Nov. 17, 1981)
 60 IBLA 50 (Nov. 17, 1981)
 60 IBLA 59 (Nov. 18, 1981)
 60 IBLA 65 (Nov. 19, 1981)
 60 IBLA 85 (Nov. 19, 1981)
 60 IBLA 90 (Nov. 19, 1981)
 60 IBLA 104 (Nov. 20, 1981)
 60 IBLA 128 (Nov. 24, 1981)
 60 IBLA 134 (Nov. 24, 1981)
 60 IBLA 173 (Nov. 24, 1981)
 60 IBLA 187 (Nov. 27, 1981)
 60 IBLA 197 (Nov. 27, 1981)
 60 IBLA 232 (Dec. 4, 1981)
 60 IBLA 237 (Dec. 4, 1981)
 60 IBLA 252 (Dec. 4, 1981)
 60 IBLA 264 (Dec. 15, 1981)
 60 IBLA 284 (Dec. 17, 1981)
 60 IBLA 370 (Dec. 22, 1981)
 60 IBLA 378 (Dec. 23, 1981)
 61 IBLA 4 (Dec. 29, 1981)
 61 IBLA 20 (Dec. 29, 1981)
 1745 -----56 IBLA 388 (Aug. 3, 1981)
 1745(a) -----56 IBLA 388 (Aug. 3, 1981)
 1746 -----57 IBLA 8 (Aug. 5, 1981)
 1751-1753 -----55 IBLA 68 (June 1, 1981)
 1761 -----55 IBLA 151 (June 8, 1981)
 55 IBLA 210 (June 18, 1981)
 55 IBLA 336 (June 26, 1981)
 55 IBLA 360 (June 26, 1981)
 55 IBLA 390 (June 30, 1981)
 58 IBLA 4 (Sept. 15, 1981)
 60 IBLA 81 (Nov. 19, 1981)
 60 IBLA 240 (Dec. 4, 1981)
 1761(a) -----5 ANCAB 174, 88 I.D. 352 (1981)
 52 IBLA 280, 88 I.D. 258 (1981)
 55 IBLA 390 (June 30, 1981)
 56 IBLA 167 (July 20, 1981)
 60 IBLA 163 (Nov. 24, 1981)
 1761(b)(1) -----60 IBLA 81 (Nov. 19, 1981)
 1761(e) -----55 IBLA 390 (June 30, 1981)

TITLE 43: (Continued)

sec. 1761-1771 -----52 IBLA 105 (Jan. 12, 1981)
 1764 -----55 IBLA 210 (June 18, 1981)
 1764(c) -----56 IBLA 167 (July 20, 1981)
 1764(g) -----55 IBLA 218 (June 18, 1981)
 56 IBLA 139 (July 20, 1981)
 60 IBLA 163 (Nov. 24, 1981)
 1766 -----55 IBLA 390 (June 30, 1981)
 1767(a) -----55 IBLA 272 (June 25, 1981)
 1769(a) -----55 IBLA 390 (June 30, 1981)
 57 IBLA 215 (Aug. 27, 1981)
 60 IBLA 221 (Nov. 30, 1981)
 1781 -----59 IBLA 291 (Oct. 30, 1981)
 1781(d) -----58 IBLA 213 (Sept. 29, 1981)
 1782 -----53 IBLA 159 (Mar. 12, 1981)
 54 IBLA 31 (Apr. 6, 1981)
 54 IBLA 242, 88 I.D. 490 (1981)
 54 IBLA 300 (Apr. 29, 1981)
 57 IBLA 79 (Aug. 21, 1981)
 57 IBLA 149 (Aug. 25, 1981)
 58 IBLA 213 (Sept. 29, 1981)
 58 IBLA 294 (Oct. 14, 1981)
 59 IBLA 291 (Oct. 30, 1981)
 59 IBLA 301 (Nov. 3, 1981)
 60 IBLA 54 (Nov. 17, 1981)
 60 IBLA 278 (Dec. 17, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)
 M-36910 (Supp.), 88 I.D. 909 (1981)
 1782(a) -----54 IBLA 215 (Apr. 23, 1981)
 54 IBLA 300 (Apr. 29, 1981)
 56 IBLA 206 (July 22, 1981)
 60 IBLA 240 (Dec. 4, 1981)
 60 IBLA 305 (Dec. 18, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)
 61 IBLA 23 (Dec. 29, 1981)
 1782(b) -----60 IBLA 240 (Dec. 4, 1981)
 60 IBLA 305 (Dec. 18, 1981)
 1782(c) -----58 IBLA 166 (Sept. 28, 1981)
 60 IBLA 240 (Dec. 4, 1981)
 60 IBLA 305 (Dec. 18, 1981)
 60 IBLA 341 (Dec. 22, 1981)
 60 IBLA 349, 88 I.D. 1115 (1981)
 M-36910 (Supp.), 88 I.D. 909 (1981)
 1802 ----- M-36942, 88 I.D. 1090 (1981)

TITLE 44:

sec. 1505(a) -----3 IBSMA 154, 88 I.D. 570 (1981)
 1507 -----52 IBLA 5 (Jan. 5, 1981)
 52 IBLA 9 (Jan. 5, 1981)
 52 IBLA 119, 88 I.D. 38 (1981)
 52 IBLA 125 (Jan. 13, 1981)
 52 IBLA 179 (Jan. 26, 1981)
 52 IBLA 214 (Jan. 30, 1981)
 52 IBLA 273 (Feb. 6, 1981)
 52 IBLA 288 (Feb. 9, 1981)
 52 IBLA 308 (Feb. 10, 1981)
 52 IBLA 375 (Feb. 19, 1981)
 53 IBLA 34 (Feb. 26, 1981)
 53 IBLA 92, 88 I.D. 341 (1981)
 53 IBLA 136 (Mar. 9, 1981)
 53 IBLA 247 (Mar. 19, 1981)
 54 IBLA 155 (Apr. 21, 1981)
 54 IBLA 184 (Apr. 22, 1981)
 54 IBLA 221 (Apr. 23, 1981)
 54 IBLA 229 (Apr. 27, 1981)
 55 IBLA 116 (June 3, 1981)
 55 IBLA 193 (June 16, 1981)
 56 IBLA 280 (July 28, 1981)
 56 IBLA 315 (July 29, 1981)
 56 IBLA 318 (July 29, 1981)
 56 IBLA 323 (July 29, 1981)
 56 IBLA 334 (July 30, 1981)
 56 IBLA 350 (Aug. 3, 1981)

TITLE 44: (Continued)

56 IBLA 354 (Aug. 3, 1981)
 56 IBLA 361 (Aug. 3, 1981)
 56 IBLA 375 (Aug. 3, 1981)
 56 IBLA 385 (Aug. 3, 1981)
 57 IBLA 23 (Aug. 6, 1981)
 57 IBLA 40 (Aug. 10, 1981)
 57 IBLA 46 (Aug. 17, 1981)
 57 IBLA 242 (Aug. 27, 1981)
 57 IBLA 266 (Aug. 28, 1981)
 57 IBLA 271 (Aug. 31, 1981)
 57 IBLA 274 (Aug. 31, 1981)
 57 IBLA 297 (Aug. 31, 1981)
 57 IBLA 339 (Sept. 1, 1981)
 58 IBLA 32 (Sept. 16, 1981)
 58 IBLA 64 (Sept. 22, 1981)
 58 IBLA 88 (Sept. 24, 1981)
 58 IBLA 121 (Sept. 24, 1981)
 58 IBLA 131 (Sept. 24, 1981)
 58 IBLA 211 (Sept. 29, 1981)
 58 IBLA 224 (Sept. 30, 1981)
 58 IBLA 251 (Oct. 6, 1981)
 58 IBLA 265 (Oct. 7, 1981)
 58 IBLA 291 (Oct. 13, 1981)
 58 IBLA 308 (Oct. 16, 1981)
 58 IBLA 319 (Oct. 16, 1981)
 58 IBLA 350 (Oct. 19, 1981)
 58 IBLA 363 (Oct. 20, 1981)
 59 IBLA 146 (Oct. 26, 1981)
 59 IBLA 247 (Oct. 29, 1981)
 59 IBLA 250 (Oct. 29, 1981)
 59 IBLA 283 (Oct. 30, 1981)
 59 IBLA 288 (Oct. 30, 1981)
 59 IBLA 311 (Nov. 4, 1981)
 60 IBLA 65 (Nov. 19, 1981)
 60 IBLA 97 (Nov. 19, 1981)
 60 IBLA 104 (Nov. 20, 1981)
 60 IBLA 171 (Nov. 24, 1981)
 61 IBLA 74 (Dec. 31, 1981)
 1510 -----52 IBLA 5 (Jan. 5, 1981)
 52 IBLA 9 (Jan. 5, 1981)
 52 IBLA 119, 88 I.D. 38 (1981)
 52 IBLA 125 (Jan. 13, 1981)
 52 IBLA 179 (Jan. 26, 1981)
 52 IBLA 214 (Jan. 30, 1981)
 52 IBLA 273 (Feb. 6, 1981)
 52 IBLA 288 (Feb. 9, 1981)
 52 IBLA 308 (Feb. 10, 1981)
 52 IBLA 375 (Feb. 19, 1981)
 53 IBLA 34 (Feb. 26, 1981)
 53 IBLA 92, 88 I.D. 341 (1981)
 53 IBLA 136 (Mar. 9, 1981)
 53 IBLA 247 (Mar. 19, 1981)
 54 IBLA 155 (Apr. 21, 1981)
 54 IBLA 184 (Apr. 22, 1981)
 54 IBLA 221 (Apr. 23, 1981)
 54 IBLA 229 (Apr. 27, 1981)
 55 IBLA 116 (June 3, 1981)
 55 IBLA 193 (June 16, 1981)
 56 IBLA 280 (July 28, 1981)
 56 IBLA 315 (July 29, 1981)
 56 IBLA 318 (July 29, 1981)

TITLE 44: (Continued)

56 IBLA 323 (July 29, 1981)
 56 IBLA 334 (July 30, 1981)
 56 IBLA 350 (Aug. 3, 1981)
 56 IBLA 354 (Aug. 3, 1981)
 56 IBLA 361 (Aug. 3, 1981)
 56 IBLA 375 (Aug. 3, 1981)
 56 IBLA 385 (Aug. 3, 1981)
 57 IBLA 23 (Aug. 6, 1981)
 57 IBLA 40 (Aug. 10, 1981)
 57 IBLA 46 (Aug. 17, 1981)
 57 IBLA 242 (Aug. 27, 1981)
 57 IBLA 266 (Aug. 28, 1981)
 57 IBLA 271 (Aug. 31, 1981)
 57 IBLA 274 (Aug. 31, 1981)
 57 IBLA 297 (Aug. 31, 1981)
 57 IBLA 339 (Sept. 1, 1981)
 58 IBLA 32 (Sept. 16, 1981)
 58 IBLA 64 (Sept. 22, 1981)
 58 IBLA 88 (Sept. 24, 1981)
 58 IBLA 121 (Sept. 24, 1981)
 58 IBLA 131 (Sept. 24, 1981)
 58 IBLA 211 (Sept. 29, 1981)
 58 IBLA 224 (Sept. 30, 1981)
 58 IBLA 251 (Oct. 6, 1981)
 58 IBLA 265 (Oct. 7, 1981)
 58 IBLA 291 (Oct. 13, 1981)
 58 IBLA 308 (Oct. 16, 1981)
 58 IBLA 319 (Oct. 16, 1981)
 58 IBLA 350 (Oct. 19, 1981)
 58 IBLA 363 (Oct. 20, 1981)
 59 IBLA 146 (Oct. 26, 1981)
 59 IBLA 247 (Oct. 29, 1981)
 59 IBLA 250 (Oct. 29, 1981)
 59 IBLA 283 (Oct. 30, 1981)
 59 IBLA 288 (Oct. 30, 1981)
 59 IBLA 311 (Nov. 4, 1981)
 60 IBLA 65 (Nov. 19, 1981)
 60 IBLA 97 (Nov. 19, 1981)
 60 IBLA 104 (Nov. 20, 1981)
 60 IBLA 171 (Nov. 24, 1981)
 3301-3324 -----60 IBLA 267 (Dec. 17, 1981)

TITLE 48:

sec. 6(a) ----- 6 AN CAB 157, 88 I.D. 1028 (1981)
 6(b) ----- 6 AN CAB 157, 88 I.D. 1028 (1981)
 357 -----55 IBLA 305 (June 25, 1981)
 357a -----55 IBLA 305 (June 25, 1981)
 357b -----55 IBLA 305 (June 25, 1981)
 376-377 -----55 IBLA 305 (June 25, 1981)

TITLE 49:

sec. 65 -----54 IBLA 174 (Apr. 21, 1981)
 65(b) -----54 IBLA 174 (Apr. 21, 1981)
 61 IBLA 8 (Dec. 29, 1981)
 211(e) -----61 IBLA 68 (Dec. 31, 1981)
 211-213 -----61 IBLA 68 (Dec. 31, 1981)
 1712(e) -----61 IBLA 68 (Dec. 31, 1981)
 1723 -----61 IBLA 68 (Dec. 31, 1981)
 1723(b) -----61 IBLA 68 (Dec. 31, 1981)

ACCOUNTS

(See also Fees, Funds, Payments--if included in this Index.)

GENERALLY

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

An Area Supervisor's order which requires that royalty be based on either the price specified in the order or the amount actually received, whichever is greater, comports with all regulatory requirements as to definitiveness and finality.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

FEES AND COMMISSIONS

Management overhead costs are not a reimbursable cost recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Utah Power and Light Co., 52 IBLA 105 (Jan. 12, 1981)

Southern California Edison Co., 55 IBLA 210 (June 18, 1981)

PAYMENTS

Management overhead costs are not a reimbursable cost recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Utah Power and Light Co., 52 IBLA 105 (Jan. 12, 1981)

Southern California Edison Co., 55 IBLA 210 (June 18, 1981)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by a bank upon itself, issued by an authorized officer of the bank, and directed to another person. Where a check submitted as a filing fee appears on its face to be a valid cashier's check, a Bureau of Land Management decision refusing such a check will be reversed and the case remanded to BLM.

Oxy Petroleum, Inc., 52 IBLA 239 (Feb. 6, 1981)

Frank H. Gower, Jr., 53 IBLA 146 (Mar. 9, 1981)

Eva McGhee, William J. Bott, 55 IBLA 292 (June 26, 1981)

ACCOUNTS--Continued

PAYMENTS--Continued

Orderly administration of the oil and gas leasing program demands that filing fees be paid to BLM in a manner consonant with administrative convenience and in accordance with the regulations. This necessarily requires that BLM cannot, without prior written instruction, transfer money paid for one purpose to another use, e.g., money paid for one month's simultaneous drawing to another month's simultaneous drawing.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

It is proper for the Bureau of Land Management to refuse to accept a check postdated 30 days after receipt as satisfactory payment of service fees for recordation of mining claims.

Jesse L. Miller, 54 IBLA 187 (Apr. 22, 1981)

A Traveler's Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1980), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Michaela M. Fitzpatrick, George M. Fitzpatrick, 55 IBLA 108 (June 1, 1981)

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

Charles J. Rydzewski, 55 IBLA 373 (June 29, 1981)
88 I.D. 625

George W. Metz, 56 IBLA 97 (July 15, 1981)

Robert L. Andersen et al., 56 IBLA 182 (July 20, 1981)

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

W. W. Priest, Michael Manduca, 55 IBLA 398 (June 30, 1981)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by the issuing bank upon itself, signed by an authorized employee of the bank, and payable to another person. Where a check submitted as a filing fee appears to meet these criteria on its face, it will be considered the equivalent of a cashier's check.

A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

John L. Messinger, Norris C. Delamore, Jr., 56 IBLA 1 (June 30, 1981)

ACCOUNTS--ContinuedPAYMENTS--Continued

A personal check is not an acceptable form of remittance under 43 CFR 3120.1-4(b) requiring a successful bidder to submit one-fifth of the amount bid as a deposit and must result in rejection of the competitive bid.

Belco Petroleum Corp., 57 IBLA 3 (Aug. 5, 1981)

REFUNDS

Failure of the high bidder at a competitive oil and gas lease sale to execute a lease results in forfeiture of the deposit submitted with the high bid. Refund of the deposit because offeror elects after the sale to withdraw his offer is not allowed.

Howell Spear, 56 IBLA 151 (July 20, 1981)

Sec. 10 of the Outer Continental Shelf Lands Act does not authorize refunds to purchasers of royalty oil.

Sec. 10 of the Outer Continental Shelf Lands Act does not authorize refunds to persons who have paid a civil penalty under sec. 24 of the Act.

Refunds and Credits Under the Outer Continental Shelf Lands Act, M-36942 (Dec. 15, 1981) 88 I.D. 1090

ACQUIRED LANDS

Lands acquired by the Forest Service pursuant to the General Exchange Act of 1922 and the Federal Land Policy and Management Act of 1976 have the status of public lands and are not subject to uranium prospecting permits under the Mineral Leasing Act for Acquired Lands, but such lands are subject to location and entry under the general mining law and to leasing under the Mineral Leasing Act of 1920.

Wyoming Fuel Co., 52 IBLA 302 (Feb. 10, 1981)

A noncompetitive oil and gas lease offer for acquired land within the boundaries of the Fort Laramie National Historic Site administered by the National Park Service is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes lands within national parks or monuments from its terms.

Ed Pendleton, 57 IBLA 146 (Aug. 25, 1981)

ACT OF FEBRUARY 8, 1887

The effect of the issuance of a patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Where BLM's records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Mary Patricia Anne Newman Gibson et al., 52 IBLA 216 (Jan. 30, 1981) 88 I.D. 244

ACT OF FEBRUARY 8, 1887--Continued

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Lula Lorene McCracken Slowey, 58 IBLA 202 (Sept. 29, 1981)

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Samuel Lee Gifford et al. (On Reconsideration), 55 IBLA 1 (May 21, 1981)

Jimmy Lorn Gibson, 59 IBLA 170 (Oct. 26, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), for such lands, is properly rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been transferred from Federal ownership.

Avo B. Hart Hedrick, 55 IBLA 143 (June 4, 1981)

ACT OF FEBRUARY 8, 1887--Continued

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

Gladys Lee Cardwell Gifford, Betty Ann Gifford Jarman, 55 IBLA 332 (June 26, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the public land laws on Sept. 5, 1969, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

Terry Burl Fryrear, 58 IBLA 94 (Sept. 24, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

Marvin Coy Gifford et al., 58 IBLA 98 (Sept. 24, 1981)

Betsy Romaine Beville, 58 IBLA 260 (Oct. 6, 1981)

William Milton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarman, 59 IBLA 182 (Oct. 27, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they were segregated from appropriation under the agricultural land laws on July 7, 1967, and Sept. 5, 1969, when the "Notice[s] of Classification of Public Lands for Multiple Use Management" were published in the Federal Register.

Don W. Hill, Sr., Lois Sallee Kelso Shrode, 58 IBLA 103 (Sept. 24, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the public land laws on July 7, 1967, when the "Notice of Classification of Public Lands

ACT OF FEBRUARY 8, 1887--Continued

for Multiple Use Management" was published in the Federal Register.

Claire Inez Wood Swanner, 58 IBLA 108 (Sept. 24, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958, and selected by the State of Nevada pursuant to that Act.

Marvin Lee Stokes, 58 IBLA 199 (Sept. 29, 1981)

ACT OF AUGUST 4, 1892

Under provisions of the Act of Aug. 4, 1892, 30 U.S.C. § 161 (1976), known as the Building Stone Act, land chiefly valuable for building stone can only be entered by mining claims in the placer form, regardless of the actual mode of occurrence of the deposit.

While deposits of limestone chiefly valuable for building stone were subject to location only as placer claims, deposits of limestone valuable for their chemical or metallurgical properties are properly located according to the form of their deposition.

Land may be considered "chiefly valuable for building stone" where the building stone values of the mineral deposit sought are greater than any other mineral values or nonmineral values for which the land may be appropriated.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

ACT OF MARCH 3, 1909

Patents issued pursuant to the Act of Mar. 3, 1909, or the Act of June 22, 1910, 30 U.S.C. §§ 81, 83-85 (1976) reserved to the United States "all coal" and the right to prospect for, mine and remove the "coal deposits" underlying the patented lands. Congress in the 1909 and 1910 Acts intended to, and did, reserve only the coal and not other minerals found in association with coal. Accordingly, all minerals other than coal, including coalbed gas, passed to the surface owner at the time a patent was issued pursuant to the 1909 or 1910 Acts.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, H-36935 (May 12, 1981) 88 I.D. 538

ACT OF JUNE 22, 1910

Patents issued pursuant to the Act of Mar. 3, 1909, or the Act of June 22, 1910, 30 U.S.C. §§ 81, 83-85 (1976) reserved to the United States "all coal" and the right to prospect for, mine and remove the "coal deposits" underlying the patented lands. Congress in the 1909 and 1910 Acts intended to, and did, reserve only the coal and not other minerals found in association with coal. Accordingly, all minerals other than coal, including coalbed gas,

ACT OF JUNE 22, 1910--Continued

passed to the surface owner at the time a patent was issued pursuant to the 1909 or 1910 Acts.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981)

88 I.D. 538

ACT OF JUNE 25, 1910

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by the Pickett Act, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by the terms of 43 U.S.C. § 142 (1970) which provided that withdrawn lands shall remain open to location for metalliferous minerals.

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

Where an executive order issued subsequent to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970), does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981)

ACT OF JULY 17, 1914

Should coalbed gas occur in lands in which "oil and gas" were reserved to the United States in agricultural patents issued under the Act of July 17, 1914, 30 U.S.C. § 121 (1976), that coalbed gas is reserved to the United States.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981)

88 I.D. 538

ACT OF MAY 21, 1930

An oil and gas lease offer for lands in a reservoir right-of-way from other than the owner of the right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

RDM Interests, 57 IBLA 163 (Aug. 27, 1981)

ACT OF AUGUST 11, 1955

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Lairy D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

ACT OF SEPTEMBER 3, 1964

Congress, with the passage of the Geothermal Steam Act, 30 U.S.C. § 1001 et seq., intended that geothermal leases be deemed as within the mineral leasing exception of sec. 4(d)(3) of the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3). Designated wilderness are open to geothermal leasing to the same extent they would have been at the date of their creation. Such leases are subject to the provisions of sec. 4(d)(3) of the Wilderness Act.

Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981)

88 I.D. 813

ACT OF SEPTEMBER 26, 1968

Bureau of Land Management properly rejects an application for the sale of public land pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1976), where the applicant refuses to pay related damages for unauthorized use of the land. Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

Reed Z. Asay, 55 IBLA 157 (June 9, 1981)

ACT OF DECEMBER 24, 1970

"Mineral." Geothermal steam, as defined in sec. 2(c) of the Geothermal Steam Act of 1970, 30 U.S.C. § 1001(c), is not a "mineral" as the term is used in the mineral leasing laws. Congress generally did not intend the Steam Act to be treated as a "mineral leasing law."

Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981)

88 I.D. 813

ADMINISTRATIVE AUTHORITY

(See also Delegation of Authority, Federal Employees & Officers, Secretary of the Interior--if included in this Index.)

GENERALLY

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Ione M. Brown, 52 IBLA 44 (Jan. 6, 1981)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Lowell L. Patten, 52 IBLA 299 (Feb. 10, 1981)

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

Reliance upon erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Estoppel will not lie where allegedly misleading advice is timely rebutted by existing regulations negating the advice given.

Vincent M. D'Amico, Wolt C. Stempel, 55 IBLA 116 (June 3, 1981)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

Robert E. Fennell, Clair B. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

Del Rupp, 57 IBLA 297 (Aug. 31, 1981)

Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

William O. Bahny, 56 IBLA 190 (July 20, 1981)

Shirley Thompson, Duane R. Thompson, 57 IBLA 154 (Aug. 25, 1981)

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

Under the "equal-footing" doctrine, a state has title to lands beneath its navigable rivers, and this Board has no jurisdiction to determine the validity of such riverbed mining claims asserted under state law. However, where an unpatented mining claim is filed for record with the Bureau of Land Management pursuant to the Federal mining law and the public records disclose that all public lands embraced in the claim had been withdrawn from mining location before the claimant located the mining claim, the filing is properly rejected by BLM and the claim declared null and void ab initio.

Gary Willis, 56 IBLA 217 (July 22, 1981)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Superior Oil Co., 57 IBLA 404 (Sept. 14, 1981)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

ESTOPPEL

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

Reliance upon erroneous advice or incomplete information provided by Departmental employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute for his failure to comply with its requirements.

St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the Government from regarding the lease as having terminated.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

The Government is not estopped from requiring the recalculation of royalty payments, even if it has accepted improper payments in the past.

PMC Corp., 54 IBLA 77 (Apr. 14, 1981)

Exclusion of appellant members of the Metlakatla Community from benefits under provisions of the Alaska Native Claims Settlement Act held not to be precluded by a contrary result reached in a prior Administrative Law Judge's decision in a similar case. The determination by the agency factfinder in the separate but similar situation is not binding upon the Board of Indian Appeals, which renders final decision for the

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

Department in disenrollment appeals referred on appeal to the Board.

Corinne Mae Howell & Her Minor Children Gary Arnold Howell, Richard Dewayne Howell, and Darcy Lynn Howell v. United States, 9 IBLA 70 (Sept. 9, 1981) 88 I.D. 822

Where a party, in the course of various proceedings before the Department, asserts facts that would, if proven, entitle him or her to obtain patent to land owned by the United States, and the litigation proceeds on the assumption that the facts are as stated, appellant will not be heard in a subsequent hearing to deny that those facts existed.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

LACHES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Simon A. Rife, 56 IBLA 378 (Aug. 3, 1981)

James N. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost through lack of enforcement by some of its officers.

Clyde K. Kobbeman, 58 IBLA 268 (Oct. 8, 1981) 88 I.D. 915

Janet A. Rodgers, 58 IBLA 275 (Oct. 8, 1981)

ADMINISTRATIVE PRACTICE

A final Departmental appellate decision construing a regulation will be applied with prospective effect only where it materially alters the interpretation given the regulation by earlier administrative decisions and where it would be unfair or prejudicial to apply such decision retroactively.

Killian L. Huger, Jr., 52 IBLA 174 (Jan. 26, 1981)

Interpretation of the Alaska Native Claims Settlement Act by the Bureau of Indian Affairs contemporaneous with the enactment of the statute and continued over the succeeding 9 years is relevant to a determination of the application to be given to the statute. The Agency refusal to enroll persons who were not United States citizens on Dec. 18, 1971, the effective date of the Act, is a reasonable application of the Act and of Departmental regulations implementing the Act, and gives the language of the statute (43 U.S.C. § 1604 (1976)) its common and ordinary meaning.

United States v. Aimee Marion Bowen (Edenshaw) and Phyllis Josephine Kimball, 8 IBLA 218 (Feb. 12, 1981) 88 I.D. 261

ADMINISTRATIVE PRACTICE--Continued

The naming of an additional party in interest on the reverse side of the drawing entry card is prima facie evidence that the named person is in fact an interested party within the ambit of 43 CFR 3102.7. However, it is not within the province of the Department of the Interior to determine the unstated intentions of the offeror as to how and when the right of an interested party will vest.

William B. Brice, 53 IBLA 174 (Mar. 16, 1981)

Under the "notation rule," where a reservoir right-of-way affecting certain land is noted on the official records of the Bureau of Land Management, that notation is effective to bar leasing of the oil and gas therein under the Mineral Leasing Act of 1920. This result follows even if the reservoir right-of-way should have been terminated.

RDM Interests, 57 IBLA 163 (Aug. 27, 1981)

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167 (Aug. 27, 1981) 88 I.D. 772

Where an oil and gas lease offer, unaccompanied by statements as required by D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), was filed prior to Nov. 9, 1978, the Pack holding will not retroactively be applied to the offer.

Cleo Chapekis, 57 IBLA 398 (Sept. 14, 1981)

Patricia Ann DeSalvo, 58 IBLA 1 (Sept. 15, 1981)

Where a party, in the course of various proceedings before the Department, asserts facts that would, if proven, entitle him or her to obtain patent to land owned by the United States, and the litigation proceeds on the assumption that the facts are as stated, appellant will not be heard in a subsequent hearing to deny that those facts existed.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

ADMINISTRATIVE PRACTICE--Continued

When mail is properly addressed and deposited in the United States mails, with postage thereon duly prepaid, there is a rebuttable presumption that it was received by the addressee in the ordinary course of mail.

Delivery by post office of a document to a BLM state office by placement of such mail in the post office box where the state office customarily receives its mail, during the hours in which the state office is open to the public for the filing of documents, constitutes delivery to and receipt by the state office of the document.

Washington Chromium Co., 60 IBLA 378 (Dec. 23, 1981)

Where an applicant for a noncompetitive oil and gas lease submits probative evidence opposing the determination by the Geological Survey that certain lands are within the known geologic structure, a hearing will be ordered so that a complete record may be developed.

Daniel A. Engelhardt, 61 IBLA 65 (Dec. 31, 1981)

ADMINISTRATIVE PROCEDURE

(See also Appeals, Confidential Information, Contests & Protests, Hearings, Judicial Review, Public Records, Regulations, Rules of Practice--if included in this Index.)

GENERALLY

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

Where a party holding an interest in property which may be adversely affected by the granting of a Native allotment points out facts of record indicating that the Native's use of the property may not have been continuous or exclusive for 5 years and that the claim may have been abandoned, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge to inquire into the circumstances surrounding this occupancy.

Alaska Pipeline Co., 52 IBLA 222 (Jan. 30, 1981)

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to the mineral claimant's lack of good faith must be clear.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Betty Alexander, 53 IBLA 139 (Mar. 9, 1981)

Pursuant to 43 CFR 2631.1, the Bureau of Land Management may properly require an applicant for patent under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), to provide specific proofs of conveyances and transfers of title.

Southern Pacific Transportation Co., B. K. Herndon, 54 IBLA 174 (Apr. 21, 1981)

Guidelines issued under BLM Manual sec. 1791 relating to preparation of an environmental analysis record with regard to a proposed timber sale are not the type of material required by 5 U.S.C. § 552(a) (1) (D) to be published in the Federal Register and as such are not binding on BLM.

Lane County Audubon Society, 55 IBLA 171 (June 11, 1981)

Under 43 CFR 4.410, a party must be adversely affected by a decision of an officer of the Bureau of Land Management in order to have the right to appeal to the Board of Land Appeals.

California State Lands Commission, 58 IBLA 213 (Sept. 29, 1981)

Service of a BLM decision is accomplished when it is delivered to the addressee's last address of record by certified mail and such delivery is substantiated by postal authorities, regardless of whether it was in fact received by the person to whom it was addressed, and the prescribed period for initiating an appeal from such decision commences on the date of such delivery.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of that portion of a State Director's decision which implements an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department and the appeal will be dismissed insofar as it relates to this issue.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

ADJUDICATION

It is not necessary to make a separate ruling on each finding of fact and conclusion of law proposed by the parties to an administrative proceeding. It is sufficient if the decision summarizes the controlling principles of law and the facts relative thereto as established by the evidence adduced.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Robert E. Fennell, Clair B. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Fabey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1971, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations, amended in 1976 and 1979, with retroactive effect.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Roselyn Isaac (On Reconsideration), 53 IBLA 306 (Mar. 25, 1981)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Richard J. Beaumont, 54 IBLA 242 (Apr. 27, 1981) 88 I.D. 490

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was withdrawn for lighthouse purposes, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Stanislaus Mike, 56 IBLA 69 (July 10, 1981)

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

Although BLM may properly reject a noncompetitive oil and gas lease offer for failure to disclose other parties in interest pursuant to 43 CFR 3102.7 (1979), or because of a multiple filing in violation of 43 CFR 3112.5-2 (1979), such a decision must be supported by facts of record. In the absence of such evidentiary support, the Board will set aside the decision and remand the case to BLM for further consideration and preparation of a proper record.

Tommy L. Lynn, 60 IBLA 47 (Nov. 17, 1981)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE LAW JUDGES

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

ADMINISTRATIVE REVIEW

It is not necessary to make a separate ruling on each finding of fact and conclusion of law proposed by the parties to an administrative proceeding. It is sufficient if the decision summarizes the controlling principles of law and the facts relative thereto as established by the evidence adduced.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Richard J. Leaubont, 54 IBLA 242 (Apr. 27, 1981)
88 I.D. 490

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

Where appellant disagrees with BLM's decision to designate an area for limited use by off-road vehicles and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

the absence of a showing of compelling reasons for modification or reversal.

John Schandelmeier, 56 IBLA 284 (July 28, 1981)

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167 (Aug. 27, 1981) 88 I.D. 772

Where appellant disagrees with BLM's decision to designate an area as permanently closed for use by off-road vehicles and seeks to have its judgment substituted for that of the decisionmaker, the appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Magic Valley Trail Machine Ass'n, Inc., 57 IBLA 284 (Aug. 31, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

A finding by BLM that some statutory mechanism has been triggered which automatically divests a right does not and cannot mean that the adversely affected party is denied recourse to the appellate process. The Board of Land Appeals is the exclusive arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Office of the Solicitor may create or deny the right of appeal to the Board.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981) 88 I.D. 879

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

Where the facts and the law are properly set forth and applied in an Administrative Law Judge's decision holding a placer mining claim null and void for a lack of discovery of a valuable mineral deposit, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Scott Johnson, 59 IBLA 207 (Oct. 27, 1981)

Where facts and law are properly set forth and applied in Administrative Law Judge decision holding lode mining claims void for lack of discovery, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Russell and Lena Journigan, 59 IBLA 393 (Nov. 10, 1981)

Although BLM may properly reject a noncompetitive oil and gas lease offer for failure to disclose other parties in interest pursuant to 43 CFR 3102.7 (1979), or because of a multiple filing in violation of 43 CFR 3112.5-2 (1979), such a decision must be supported by facts of record. In the absence of such evidentiary support, the Board will set aside the decision and remand the case to BLM for further consideration and preparation of a proper record.

Tommy L. Lynn, 60 IBLA 47 (Nov. 17, 1981)

Where after completion of a final environmental statement covering the Josephine Sustained Yield Unit 10-year Timber Management Plan, the State Director issues a decision implementing one of the alternatives in the EIS, an appeal disagreeing with certain portions of the EIS will be duly considered with regard for the public interest. However, where appellants seek to have their judgment substituted for that of the decisionmaker, the decisionmaker's action will ordinarily be affirmed in the absence of a showing of compelling reason for modification or reversal.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

BURDEN OF PROOF

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that an individual has committed a grazing trespass if that finding is in accordance with, and supported by, reliable, probative and substantial evidence.

Where the evidence as to specific trespass indicates that, of a number of cattle counted, some were located on intermingled private land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands. The burden then shifts to the grazing licensee to rebut this presumption.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

ADMINISTRATIVE PROCEDURE--ContinuedBURDEN OF PROOF--Continued

When the Government contests a mining claim on a charge of no discovery of a valuable mineral deposit it assumes the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence. Where the opinion of contestee's expert that discovery of gold was made is not supported by clear evidence that the claim holds sufficient quantities of gold to make mining profitable, the Board will affirm an Administrative Law Judge's finding of invalidity.

United States v. John McDowell, 53 IBLA 270 (Mar. 24, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Earl F. Fox, 53 IBLA 333 (Mar. 26, 1981)

United States v. J. L. Noss and Mary F. Noss, 54 IBLA 355 (May 12, 1981)

United States v. Blanch P. Day, Wilma Jean Kendall, 56 IBLA 300 (July 29, 1981)

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

ADMINISTRATIVE PROCEDURE--ContinuedBURDEN OF PROOF--Continued

The sufficiency of a Government's prima facie case is dependent upon the direct evidence presented by the Government together with the testimony of Government witnesses elicited in cross-examination.

United States v. Maurice Duval et al., 53 IBLA 341 (Mar. 26, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Jesse M. Taggart et al., 53 IBLA 353 (Mar. 30, 1981)

Where the Bureau of Land Management's final initial inventory decision states that certain public land is eliminated from wilderness review in that it obviously lacks wilderness characteristics because it is too small to make practicable its preservation and use in an unimpaired condition, that decision will be affirmed in the absence of sufficient reasons to change the result.

Save the Glades Committee, 54 IBLA 215 (Apr. 23, 1981)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

A mining claimant will not have satisfied his burden of proof with respect to marketability where the evidence indicates a superabundance of the mineral of commercial quality such that supply exceeds demand and the claimant fails to show that his mineral deposit possesses a unique advantage over other deposits from potentially competitive sources.

United States v. The Dredge Corp., 54 IBLA 281 (Apr. 28, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however,

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. John McDowell and Miguel Nunez, 56 IBLA 100 (July 15, 1981)

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

A prima facie case of lack of discovery of a valuable mineral deposit is established when a mineral examiner testifies for the United States that he examined each claim and could find no evidence showing the discovery of a valuable mineral deposit. Mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. D. J. Polashek, 57 IBLA 104 (Aug. 25, 1981)

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claim is valid.

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

DECISIONS

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that an individual has committed a grazing trespass if that finding is in accordance with, and supported by, reliable, probative and substantial evidence.

Where the evidence as to specific trespass indicates that, of a number of cattle counted, some were located on intermingled private land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate

ADMINISTRATIVE PROCEDURE--Continued

DECISIONS--Continued

proportional to the ratio of forage available on private and public lands. The burden then shifts to the grazing licensee to rebut this presumption.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

It is not necessary to make a separate ruling on each finding of fact and conclusion of law proposed by the parties to an administrative proceeding. It is sufficient if the decision summarizes the controlling principles of law and the facts relative thereto as established by the evidence adduced.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

The Board of Land Appeals will not dismiss or set aside a decision by the Bureau of Land Management holding an appellant liable for an innocent mineral trespass solely because a notice of trespass cited a criminal statute.

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

Although BLM may properly reject a noncompetitive oil and gas lease offer for failure to disclose other parties in interest pursuant to 43 CFR 3102.7 (1979), or because of a multiple filing in violation of 43 CFR 3112.5-2 (1979), such a decision must be supported by facts of record. In the absence of such evidentiary support, the Board will set aside the decision and remand the case to BLM for further consideration and preparation of a proper record.

Tommy L. Lynn, 60 IBLA 47 (Nov. 17, 1981)

Where, in a Bureau of Land Management decision to issue conveyance, a water body excluded from the selection application on the basis that it is navigable is expressly "considered" nonnavigable and the underlying submerged lands thus deemed selected by the applicant, the Bureau of Land Management has made a navigability determination with regard to the subject water body.

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

HEARINGS

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

--Continued

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that an individual has committed a grazing trespass if that finding is in accordance with, and supported by, reliable, probative and substantial evidence.

Where the evidence as to specific trespass indicates that, of a number of cattle counted, some were located on intermingled private land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands. The burden then shifts to the grazing licensee to rebut this presumption.

Settlement agreements compromising prior trespasses may be considered an admission of liability only where, by the terms of a settlement, liability is admitted. Where, however, liability has been initially determined in a Departmental adjudication, such a determination is properly considered in a subsequent hearing. As probative of the issue of "repeated" violations, absent a stipulated settlement which expressly vacates the factual determinations made in the prior adjudication.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Notice and an opportunity for a hearing is required only where there is a disputed question of fact and where validity of a millsite location turns on the legal effect to be given facts of record concerning the status of the land when the millsite was located, no hearing is required.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

A coal prospecting permittee who applies for a coal lease is entitled to a hearing before an Administrative Law Judge before his application is rejected, where the permittee alleges that the application contains data that commercial quantities of coal exist on the lands; however, where the permittee alleges that there is coal in commercial quantities in certain lands as measured by the mining industry standard BLM and

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Survey should have the opportunity to consider whether commercial quantities as measured by the mining industry is sufficient to comply with commercial quantities as defined in 43 CFR 3430.1-2.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Roselyn Isaac (On Reconsideration), 53 IBLA 306 (Mar. 25, 1981)

The Board of Land Appeals has the discretion to grant a request for a hearing on issues of fact but, in order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

A second hearing will not be afforded where a mining claimant has been given notice and an opportunity to appear at a hearing and where nothing has been submitted to indicate that another hearing would produce a different result.

United States v. Michael Kurelich et al., 54 IBLA 124 (Apr. 17, 1981)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of witnesses may be submitted.

The Court of Appeals for the Ninth Circuit has held that application of the Departmental contest procedures to provide the allotment applicant with notice and an opportunity for a hearing prior to adverse action on the allotment application complies, at least facially, with the due process requirements set forth in the court's mandate in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

State of Alaska (Leland R. Estabrook), 54 IBLA 346 (May 12, 1981)

A coal prospecting permittee who applies for a coal lease, alleging with supportive data that there is coal in commercial quantities within certain lands in its permit, is entitled to a hearing conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before its application may be finally rejected because it has not shown coal in commercial quantities.

Hiko Bell Mining and Oil Co., 55 IBLA 324 (June 26, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was withdrawn for lighthouse purposes, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Stanislaus Mike, 56 IBLA 69 (July 10, 1981)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial Bureau of Land Management decision, adverse to

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

him, becomes final. Appeal to this Board satisfies the due process requirements.

Gary Willis, 56 IBLA 217 (July 22, 1981)

Mining claims located on land previously withdrawn from mineral entry are null and void ab initio. However, where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment to a previous location or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. M. Polk, Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record completed at the hearing, despite the absence of evidence in support of the party's case.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

Mining claimants who have not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 have no due process right to an evidentiary hearing before the Department of the Interior to show that their actual intent not to abandon rebuts that section's conclusive presumption of abandonment, since the Department is duty-bound to enforce the conclusiveness of the statute's presumption whenever noncompliance has occurred, and any such hearing would be valueless.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

A mining claimant is not entitled to a hearing before his claim can be declared invalid for having been located on land which is segregated from location.

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Absent a patent application, in a mining contest hearing where the Government's evidence of lack of discovery relates only to insufficient quality and quantity of mineralization and the mining claimant produces evidence sufficient to preponderate on those issues, the contest complaint is properly dismissed.

United States v. Malin W. Lewis, 58 IBLA 282 (Oct. 8, 1981)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone and Telegraph Co. (On Reconsideration), 59 IBLA 343 (Nov. 5, 1981)

The Department of the Interior will not grant a hearing to examine a determination by the Forest Service that land is not chiefly valuable for agricultural or grazing uses where such determination is entrusted by statute to the Secretary of Agriculture.

Jimmie A. George, Sr., 60 IBLA 14 (Nov. 16, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

ADMINISTRATIVE PROCEDURE--Continued

RULEMAKING

The rulemaking procedures in 5 U.S.C. § 553 (1976) do not apply to administrative interpretations which conclude that the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 is to be included as part of the royalty base under Indian coal leases.

Peabody Coal Co., 53 IBLA 261 (Mar. 23, 1981)

SUBSTANTIAL EVIDENCE

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

AGENCY

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)

AIRPORTS

It is proper to reject an application for conveyance of Government-owned lands for airport development under 49 U.S.C. § 1723 (1976), where the land has been withdrawn for military purposes, is currently used as an Army air field, and where Army officials object to the conveyance.

State of Alaska, 61 IBLA 68 (Dec. 31, 1981)

ALASKA

GENERALLY

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Equitable adjudication of an application to purchase a trade manufacturing site claim filed at least

ALASKA--Continued

GENERALLY--Continued

12 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Stuart Grant Ramstad, 55 IBLA 223 (June 18, 1981)

HOMESITES

Where a homesite entryman files a notice of location, stakes out his site, and offers convincing evidence on appeal that he cut timber on the site prior to a withdrawal of the subject lands from all forms of appropriation, sufficient occupation has taken place to establish in the entryman valid existing rights prior to withdrawal.

Where a homesite entryman dwells in a log and visquine tepee with wooden floor and wood stove for a period not less than 5 months per year for 3 years, and such residency is completed within 5 years of the filing of a notice of location, the residence requirements imposed by 43 U.S.C. § 687a (1976) have been met.

Equitable adjudication may be invoked to permit consideration of a homesite purchase application that was not filed within the time required, where substantial compliance with the law has been made and valid existing rights were established before the land was withdrawn by Public Land Order 5418.

Larry L. Lowenstein, 57 IBLA 95 (Aug. 25, 1981)

Pursuant to the Act of May 26, 1934, 43 U.S.C. § 687a (1976), a homesite claimant must show that at the time of filing an application to purchase he had occupied his claim in a habitable house for the required length of time. Construction of a cabin and uncorroborated statements regarding occupancy will not suffice to establish occupancy where there are substantial indications that the claimant did not intend to make the claim his home.

United States v. Gerald H. Braniff, 59 IBLA 337 (Nov. 5, 1981)

HOMESTEADS

An application to make homestead entry on land previously classified for selection by the State of Alaska is properly rejected.

Deborah Lowmaster, 52 IBLA 198 (Jan. 26, 1981)

NATIVE ALLOTMENTS

Where a party holding an interest in property which may be adversely affected by the granting of a Native allotment points out facts of record indicating that the Native's use of the property may not have been continuous or exclusive for 5 years and that the claim may have been abandoned, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge to inquire into the circumstances surrounding this occupancy.

Alyeska Pipeline Co., 52 IBLA 222 (Jan. 30, 1981)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

When a Native allotment application has been rejected because the applicant failed to complete 5 years of qualifying use and occupancy prior to the filing of an application for withdrawal for powersite purposes, the case will be remanded for readjudication under sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), unless the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by act of Congress. If the allotment applicant commenced the qualifying use of the land after its withdrawal or classification, the allotment shall be made subject to the right of reentry provided the United States.

William Carlo, Sr. (On Reconsideration), 53 IBLA 168 (Mar. 12, 1981)

An Alaskan Native allotment applicant is required to make satisfactory proof of substantially continuous use and occupancy of the land for a minimum period of 5 years. Such use and occupancy contemplates substantial actual possession or use of the land, at least potentially exclusive of others, and not merely intermittent use. While qualifying use must be substantially continuous, there is no requirement that the 5-year use be in a consecutive 5-year period.

The right to a Native allotment vests only upon the completion of 5 years' use or occupancy of land and the filing of an application therefor. Absent the timely filing of an allotment application, where a Native, who has completed the requisite 5 years' use, ceases to use or occupy the land and permits the land to return to an unoccupied state, the right to an allotment of that land also terminates, regardless of the subjective intent of the Native. In a similar fashion, all possessory rights afforded by the Act of May 17, 1884, 23 Stat. 24, 26, and other similar Acts, terminate upon the cessation of actual use or occupancy. Such lands then become open to the initiation of rights by others.

The provisions of 25 U.S.C. § 194 (1976) relating to the placing of the burden of proof do not apply where the Government contests the qualifications of an allotment applicant. An allotment applicant in such a situation is the proponent of the rule and must show his or her entitlement to the land sought.

United States v. Donald E. Flynn and Heirs of Henry Orock (Deceased), 53 IBLA 208 (Mar. 18, 1981)

88 I.D. 373

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970).

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Roselyn Isaac (On Reconsideration), 53 IBLA 306 (Mar. 25, 1981)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

A Native allotment application for withdrawn lands may be granted when the applicant has commenced the required use and occupancy prior to the withdrawal, if all other requirements have been met. The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen acting for herself, and not as a dependent child visiting and using the land in the company of her parents. Native allotment applicants who were 8 years old and older at the date the land was withdrawn and who assert independent use and occupancy of the land should be afforded notice and opportunity for a hearing to prove the adequacy and independence of their use and occupancy.

Sarah F. Lindgren (On Reconsideration), 54 IBLA 181 (Apr. 22, 1981)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Jack Gosuk (On Reconsideration), 54 IBLA 306 (Apr. 29, 1981)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Anuska Tugayuk (On Reconsideration), 59 IBLA 345 (Nov. 5, 1981)

Elia Wassillie (On Reconsideration), 59 IBLA 361 (Nov. 9, 1981)

Mary Ayotjak (On Reconsideration), 59 IBLA 384 (Nov. 9, 1981)

Warner Bergman (On Reconsideration), 60 IBLA 214 (Nov. 27, 1981)

Beulah Moses (On Reconsideration), 60 IBLA 252 (Dec. 4, 1981)

Nora E. Konukpeok (On Reconsideration), 60 IBLA 394 (Dec. 23, 1981)

Louise Luke (On Reconsideration), 60 IBLA 399 (Dec. 28, 1981)

Evan Chiskok, Alex Hunt, Angela Odinzoff, Antonia Raymond (On Reconsideration), 61 IBLA 1 (Dec. 28, 1981)

The Act of May 17, 1906, 34 Stat. 197, as amended, 43 U.S.C. § 270-1 (1970), repealed subject to pending applications, 43 U.S.C. § 1617 (1976), authorized the Secretary to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska to any Indian, Aleut, or Eskimo who resides in and is a Native of Alaska. No allotment shall be made to any person until said person has made proof satisfactory to the Secretary of substantially continuous use and occupancy of the land for a period of 5 years.

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of witnesses may be submitted.

The Court of Appeals for the Ninth Circuit has held that application of the Departmental contest procedures to provide the allotment applicant with notice and an opportunity for a hearing prior to adverse action on the allotment application complies, at least facially, with the due process requirements set forth in the court's mandate in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). Pence v. Andrews, 586 F.2d 733 (9th Cir. 1978).

State of Alaska (Leland R. Estabrook), 54 IBLA 346 (May 12, 1981)

Where a Native allotment application filed in 1961 is rejected, more than 13 years after applicant has submitted acceptable evidence of his use and occupancy of the land for more than the required 5-year period set out in the appropriate statute, solely on the basis of a Geological Survey report in 1974 that the land was believed to be prospectively valuable for phosphate, the decision rejecting the application will be set aside and the matter remanded to BLM to proceed to issuance of patent as land must be considered to be nonmineral in character absent a showing that minerals are present in such quantities and such qualities as would induce a person of ordinary prudence to expend time and money with a reasonable prospect of success in developing a paying mine thereon.

Heirs of Simon Paneak, 55 IBLA 305 (June 25, 1981)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which described either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, were approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to resolution of any protest filed before the end of the 180-day period.

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was withdrawn for lighthouse purposes, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Stanislaus Mike, 56 IBLA 69 (July 10, 1981)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Although only nonmineral land may be allotted, Congress has defined that term as used in the Native Allotment Act to include land valuable for deposits of sand and gravel.

Applications for Alaska Native allotments in "core" townships of Native villages are subject to the statutory approval contained in sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, notwithstanding a State selection or tentative approval thereof for the same lands prior to Dec. 18, 1971.

Agnes S. Samuelson, 56 IBLA 242 (July 22, 1981)
88 I.D. 663

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

Secretarial guidelines of Oct. 18, 1973, interpreted the provisions of 43 U.S.C. § 270-3 (1970) to require an applicant for a Native allotment to complete 5 years use and occupancy prior to any withdrawal of the lands sought. Secretarial Order No. 3040 of May 25, 1979, rescinded these guidelines in favor of an interpretation requiring the commencement of use and occupancy or the filing of a Native allotment application prior to a withdrawal of the land.

The substantial use and occupancy contemplated by the Native Allotment Act must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

company with his parents. An applicant's use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

The Department of the Interior will not grant a hearing to examine a determination by the Forest Service that land is not chiefly valuable for agricultural or grazing uses where such determination is entrusted by statute to the Secretary of Agriculture.

Jimmie A. George, Sr., 60 IBLA 14 (Nov. 16, 1981)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (Dec. 2, 1980), Congress provided that all Native allotment applications pending before the Department on Dec. 18, 1971, which described either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, were to be approved on the 180th day following the effective date of that Act, subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, unless one of that statute's exceptions applies to require further adjudication of the case.

Gregory Anelcn, Sr. (On Reconsideration), 60 IBLA 101 (Nov. 19, 1981)

NAVIGABLE WATERS

Generally

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Northway Natives, Inc., 6 ANCAB 1 (Aug. 5, 1981)
88 I.D. 711

Doyon, Ltd., 6 ANCAB 138 (Oct. 30, 1981)

OIL AND GAS LEASES

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

"Leasing." The word "leasing" in the phrase "no leasing * * * leading to production of oil and gas" in

ALASKA--Continued

OIL AND GAS LEASES--Continued

sec. 1003 of the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

Robert H. Covington et al., 55 IBLA 232 (June 22, 1981)
88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

POSSESSORY RIGHTS

The right to a Native allotment vests only upon the completion of 5 years' use or occupancy of land and the filing of an application therefor. Absent the timely filing of an allotment application, where a Native, who has completed the requisite 5 years' use, ceases to use or occupy the land and permits the land to return to an unoccupied state, the right to an allotment of that land also terminates, regardless of the subjective intent of the Native. In a similar fashion, all possessory rights afforded by the Act of May 17, 1884, 23 Stat. 24, 26, and other similar Acts, terminate upon the cessation of actual use or occupancy. Such lands then become open to the initiation of rights by others.

United States v. Donald E. Flynn and Heirs of Henry Orock (Deceased), 53 IBLA 208 (Mar. 18, 1981)
88 I.D. 373

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Stuart Grant Ramstad, 55 IBLA 223 (June 18, 1981)

STATEHOOD ACT

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

ALASKA--Continued

TRADE AND MANUFACTURING SITES

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Equitable adjudication of an application to purchase a trade manufacturing site claim filed at least 12 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Stuart Grant Ramstad, 55 IBLA 223 (June 18, 1981)

ALASKA NATIONAL INTEREST LANDS
CONSERVATION ACT

GENERALLY

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Robert H. Covington et al., 55 IBLA 232 (June 22, 1981)
88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

ABORIGINAL CLAIMS

The provisions of the Alaska Native Claims Settlement Act defining the class of persons entitled to share in benefits under the Act are not ambiguous so as to require reference to the legislative history to determine whether persons becoming United States citizens after Dec. 18, 1971, the effective date of the Act, are entitled to be enrolled.

United States v. Aimee Marion Bowen (Edenshaw) and Phyllis Josephine Kimball, 8 IBLA 218 (Feb. 12, 1981)
88 I.D. 261

ADMINISTRATIVE PROCEDURE

Generally

Absent reasons justifying continuance as to a specific issue therein, the appeal will be dismissed as to this issue when a stipulation includes a voluntary withdrawal of this issue by the appellant before the Board.

Yak-Tat Kwaan, Inc., 5 ANCAR 172 (Feb. 27, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

Pursuant to the Departmental Manual 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

Oregon Portland Cement Co., 6 AN CAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 AN CAB 111 (Sept. 29, 1981)

In the absence of allegation of error in the decision itself, an allegation that an internal unpublished agency practice regarding predecision procedure was violated does not provide a basis for appeal to this Board.

The general language of 43 CFR 2650.0-2 and § 2(b) of the Alaska Native Claims Settlement Act that the settlement of claims of Alaska Natives be accomplished with maximum participation by Natives in decisions affecting their rights and property does not establish an appealable right to predecision notice of Departmental intent to reject a selection.

Departmental regulations at 43 CFR 2653.5, insofar as they prescribe a specified course of action including publication, referral, investigation, conferring, reporting, etc., by the Department with regard to selections of public lands made pursuant to § 14(h)(1) of the Alaska Native Claims Settlement Act, cannot apply when the selected lands are not public lands and the selection applications must be rejected at the outset.

Doyon, Ltd., 6 AN CAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 AN CAB 129 (Oct. 22, 1981)

Where, in a Bureau of Land Management decision to issue conveyance, a water body excluded from the selection application on the basis that it is navigable is expressly "considered" nonnavigable and the underlying submerged lands thus deemed selected by the applicant, the Bureau of Land Management has made a navigability determination with regard to the subject water body.

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd., 6 AN CAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 AN CAB 242 (Dec. 16, 1981) 88 I.D. 1105

Applications

Where conveyance of land to a Native corporation under ANCSA would effectively deny a pending application for a right-of-way across such land, the applicant

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Applications--Continued

is entitled to a decision expressly granting or denying the right-of-way and stating the reasons therefor.

Nelbro Packing Co., 5 AN CAB 174 (Mar. 9, 1981) 88 I.D. 352

Conveyances

Rights-of-way granted by Revised Statutes Sec. 2477 shall be identified in the decision to issue conveyance and in the conveyance document in the same manner as other third-party interests which the Bureau of Land Management need not adjudicate.

State of Alaska, Dept. of Transportation and Public Facilities, 5 AN CAB 307 (June 26, 1981) 88 I.D. 629

Decision to Issue Conveyance

Departmental policy expressed in Secretary's Order No. 3029 and converted into the Departmental Manual at 601 DM 2.3 and 2.4 does not require the Bureau of Land Management to identify or adjudicate alleged third-party interests derived from sources other than the Federal Government or the State of Alaska.

Tetlin Native Corp., 5 AN CAB 197 (Apr. 14, 1981) 88 I.D. 442

Tetlin Native Corp., 5 AN CAB 212 (Apr. 15, 1981)

Rights-of-way granted by Revised Statutes Sec. 2477 shall be identified in the decision to issue conveyance and in the conveyance document in the same manner as other third-party interests which the Bureau of Land Management need not adjudicate.

State of Alaska, Dept. of Transportation and Public Facilities, 5 AN CAB 307 (June 26, 1981) 88 I.D. 629

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Doyon, Ltd., 5 AN CAB 354 (July 24, 1981)

Northway Natives, Inc., 6 AN CAB 1 (Aug. 5, 1981) 88 I.D. 711

Doyon, Ltd., 6 AN CAB 138 (Oct. 30, 1981)

The general language of 43 CFR 2650.0-2 and § 2(b) of the Alaska Native Claims Settlement Act that the settlement of claims of Alaska Natives be accomplished with maximum participation by Natives in decisions affecting their rights and property does not establish an appealable right to predecision notice of Departmental intent to reject a selection.

Doyon, Ltd., 6 AN CAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 AN CAB 129 (Oct. 22, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Publication

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Northway Natives, Inc., 6 ANCAB 1 (Aug. 5, 1981)
88 I.D. 711

Doyon, Ltd., 6 ANCAB 138 (Oct. 30, 1981)

The general language of 43 CFR 2650.0-2 and § 2(b) of the Alaska Native Claims Settlement Act that the settlement of claims of Alaska Natives be accomplished with maximum participation by Natives in decisions affecting their rights and property does not establish an appealable right to predecision notice of Departmental intent to reject a selection.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

ALASKA NATIVE CLAIMS APPEAL BOARD

AppealsGenerally

Where the Federal Government grants a right-of-way for a Federal aid material site, that right-of-way, if valid, is a valid existing right within the meaning of § 14(g) of ANCSA, and as such a patent issued pursuant to ANCSA must contain provisions making it subject to the right-of-way.

If the terms of the right-of-way grants were violated, the rights-of-way would not be automatically terminated but would be subject to cancellation within the discretion of the Bureau of Land Management.

When the record before the Bureau of Land Management raises questions which may affect the validity of Federally created third-party interests, Secretary's Order No. 3029 requires the Bureau of Land Management to determine through adjudication, the validity of such interests.

Northway Natives, Inc., 5 ANCAB 147 (Jan. 5, 1981)
88 I.D. 14

Denial of an appeal brought prematurely does not prejudice any right an appellant may have to appeal a future decision of the Bureau of Land Management to convey lands, provided such appeal is properly filed pursuant to applicable regulations.

Joseph C. Manga, 5 ANCAB 343 (June 26, 1981)

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the Federal Register or set forth in the Departmental Manual.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981)
88 I.D. 760

Albert Hanan et al.; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedGenerally--Continued

In the absence of allegation of error in the decision itself, an allegation that an internal unpublished agency practice regarding predecision procedure was violated does not provide a basis for appeal to this Board.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

Decisions

When reservation of public easements under § 17(b) of ANCSA is appealed and the issue has been remanded to the Bureau of Land Management for easement conformance pursuant to regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management subsequently renders a decision which modifies the public easements reserved, such modified decision supersedes the previous easement reservations and constitutes the final, appealable decision to reserve public easements under § 17(b) in a conveyance under ANCSA.

When the appealed issue of public easements reserved under § 17(b) of ANCSA, in the Decision to Issue Conveyance, has been remanded for easement conformance under regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management's easement conformance decision modifying the Decision to Issue Conveyance is published, those § 17(b) easement issues appealed from the initial Decision to Issue Conveyance become moot.

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Where an appeal challenges the location of an easement reserved in a Decision to Issue Conveyance, and the Bureau of Land Management then changes the location of such easement in a published amendment to the Decision to Issue Conveyance, any issue concerning the original easement location is moot and the appeal will be dismissed as to that issue.

A published amendment to a Decision to Issue Conveyance is itself an appealable decision, and where such amendment changes the location of an easement from that described in the original Decision to Issue Conveyance, the new location of the easement is subject to appeal.

Ray DeVilbiss (Wolverine Grazing Ass'n), 6 ANCAB 122 (Oct. 6, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedDismissal

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a voluntary dismissal.

Doyon, Ltd., 5 ANCAB 163 (Jan. 14, 1981)

City of Kodiak, 5 ANCAB 297 (May 13, 1981)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when there remain therein no issues to be resolved by the Board.

Deloycheet, Inc., 5 ANCAB 165 (Feb. 20, 1981)

Ketchikan Public Utilities, 5 ANCAB 279 (Apr. 30, 1981)

Ray DeVilbiss (Wolverine Grazing Ass'n), 6 ANCAB 122 (Oct. 6, 1981)

Absent reasons justifying the continuance of the appeal as to a specific issue therein, that issue will be dismissed when the appellant informs the Board that the specific issue is no longer an issue on appeal.

Where one issue on appeal is that the Bureau of Land Management erred by excluding certain lands from conveyance without adjudicating the status of such lands, and the appellant and the Bureau of Land Management stipulate to withdrawal of the appeal on condition that the Bureau of Land Management will later adjudicate the status of such lands, then the issue is resolved and the Board will order partial dismissal of the appeal as to that issue.

Northway Natives, Inc., 5 ANCAB 168 (Feb. 26, 1981)

Absent reasons justifying continuance as to a specific issue therein, the appeal will be dismissed as to this issue when a stipulation includes a voluntary withdrawal of this issue by the appellant before the Board.

Yak-Tat Kwaan, Inc., 5 ANCAB 172 (Feb. 27, 1981)

Where all issues presented by an appeal have been resolved by agreement and action of the parties, the appeal will be dismissed.

Lillie Pleasant, et al., 5 ANCAB 195 (Mar. 31, 1981)

An appeal will be dismissed when the appellant fails to respond to an order of this Board requiring a showing of cause why the appeal should not be dismissed.

Kaguyak, Inc., 5 ANCAB 257 (Apr. 21, 1981)

An appeal will be dismissed when an appellant has failed to file additional pleadings ordered by the Board pursuant to 43 CFR Part 4, Subpart J, 4.907, and further fails to comply with an order of the Board requiring a showing of cause.

Alaska Placer Co., 5 ANCAB 260 (Apr. 24, 1981)

88 I.D. 511

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedDismissal--Continued

Absent a showing of any other interest or other reason justifying the continuance of the appeal, the appeal will be dismissed when a stipulation by appellant and holder of other affected interests requests dismissal of the appeal.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 284 (May 4, 1981)

Absent reasons justifying continuance, a specified portion of an appeal will be dismissed when the only appellant before the Board files a motion to dismiss that portion of its appeal.

Tetlin Native Corp., 5 ANCAB 299 (May 13, 1981)

When an appeal is filed prematurely, it will be dismissed without prejudice.

Chugach Natives, Inc., 5 ANCAB 301 (May 18, 1981)

An appeal will be dismissed for lack of diligent prosecution when a party fails to respond to an order of this Board requiring a showing of cause why the appeal should not be dismissed.

Arctic Mining Co., 5 ANCAB 302 (May 29, 1981)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant and all parties of record before the Board stipulate to a dismissal of the appeal.

Ida Lawrence, 5 ANCAB 304 (May 29, 1981)

Alaska Offshore Marine Services, Inc. and Milton Holmes, 6 ANCAB 134 (Oct. 23, 1981)

Joseph C. Manga et al., 6 ANCAB 136 (Oct. 26, 1981)

When an issue on appeal is limited to the claim that the Bureau of Land Management erred in a Decision to Issue Conveyance by incorrectly describing lands from which a parcel of land is excluded and when the Bureau of Land Management provides a corrected description of the lands without objection by the appellant, the issue is mooted and will be dismissed.

Absent a showing of any other interest or other reason justifying the continuance of an appealed issue, an appeal will be dismissed when a stipulation by appellant and holder of any other affected interests accepts the Bureau of Land Management's determination of a disputed issue and requests conveyance as in issued Decision to Issue Conveyance.

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Where an appeal is not filed within 30 days after receipt of actual notice or within 30 days after publication in the Federal Register, as required by regulations in 43 CFR 4.903(a), the appeal must be dismissed.

Where an appeal is filed 48 days after the date of the decision appealed, and the appellant does not respond to an order to show cause why the appeal

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedDismissal--Continued

should not be dismissed for failure to file notice of appeal timely, the appeal will be dismissed.

State of Alaska, 5 ANCAB 373 (July 28, 1981)

Absent reasons justifying continuance of an appeal as to a particular issue, an appeal will be dismissed when the appellant before the Board withdraws its appeal of that issue.

Northway Natives, Inc., 6 ANCAB 1 (Aug. 5, 1981)
88 I.D. 711

An appeal to the Secretary of the Interior will be dismissed when enactment of legislation renders moot the questions raised on appeal.

U.S. Fish and Wildlife Service, 6 ANCAB 37 (Aug. 21, 1981)
88 I.D. 757

Where all issues presented by an appeal have been resolved by agreement and action of the parties, and the appellant has withdrawn the appeal, the appeal will be dismissed.

Kodiak Island Borough, 6 ANCAB 93 (Sept. 28, 1981)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a motion to dismiss.

Bering Straits Native Corp., 6 ANCAB 127 (Oct. 21, 1981)

State of Alaska, 6 ANCAB 230 (Dec. 15, 1981)

State of Alaska, 6 ANCAB 233 (Dec. 15, 1981)

State of Alaska, 6 ANCAB 236 (Dec. 15, 1981)

State of Alaska, 6 ANCAB 239 (Dec. 15, 1981)

State of Alaska, 6 ANCAB 256 (Dec. 21, 1981)

State of Alaska, 6 ANCAB 259 (Dec. 21, 1981)

State of Alaska, 6 ANCAB 262 (Dec. 21, 1981)

Where an appeal is remanded to allow amendment of the appealed decision in the manner stipulated by the parties to the appeal, and where such amendment resolves all the issues raised in the appeal, the appeal will be dismissed following issuance and any required publication of the amendment.

State of Alaska, Dept. of Transportation and Public Facilities, 6 ANCAB 143 (Oct. 30, 1981)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant requests dismissal on the grounds that all issues have been resolved by a negotiated settlement.

Doyon, Ltd., 6 ANCAB 145 (Nov. 24, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedDismissal--Continued

Absent reasons justifying continuance of the appeal, an appeal will be dismissed for lack of diligent prosecution when the only appellant fails to file with the Board, within the time allowed, substantive briefing in support of the appeal.

Joseph C. Manga, 6 ANCAB 147 (Nov. 27, 1981)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board stipulates and agrees to dismissal of its appeal.

State of Alaska, Dept. of Transportation and Public Facilities, 6 ANCAB 150 (Nov. 27, 1981)

Jurisdiction

Where a decision by the BLM involves the effect of the Alaska Native Claims Settlement Act upon an interest, or pending application for an interest derived under the public land laws, including the general mining law and mineral leasing acts, any appeal from such decision shall be directed to the Alaska Native Claims Appeal Board. Where the decision by the BLM involves the validity of an interest, or pending application for an interest, asserted under the public land laws, including the general mining law and mineral leasing acts, any appeal from such decision shall be directed to the Interior Board of Land Appeals.

Nelbro Packing Co., 5 ANCAB 174 (Mar. 9, 1981)
88 I.D. 352

The Board has jurisdiction to decide whether the Bureau of Land Management, in issuing a decision to convey land pursuant to ANCSA, erred by failing to identify and adjudicate an alleged third-party interest derived from a source other than the Federal Government or the State of Alaska.

Tetlin Native Corp., 5 ANCAB 197 (Apr. 14, 1981)
88 I.D. 442

Tetlin Native Corp., 5 ANCAB 212 (Apr. 15, 1981)

The effect of the issuance of a patent to public lands by the United States, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to end all authority and jurisdiction of the Department of the Interior over the lands conveyed. The proper forum to further adjudicate the status of such an interest is in a judicial proceeding and the Board lacks jurisdiction to decide the issue.

Tetlin Native Corp., 5 ANCAB 220 (Apr. 17, 1981)

The Board is without jurisdiction to adjudicate the validity of a Native allotment.

Clara Goodman, 6 ANCAB 17 (Aug. 5, 1981) 88 I.D. 718

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedJurisdiction--Continued

The approval of the Alaska State Director of the Bureau of Land Management of a general plan of action for meeting the requirements of sec. 22(k) of the Alaska Native Claims Settlement Act is not a decision "rendered by Departmental officials in matters relating to land selection arising under the Alaska Native Claims Settlement Act" within the context of 43 CFR 4.1(b)(5), and an appeal from the approval of such a plan must be dismissed by this Board for lack of jurisdiction.

Sierra Club, Inc. and Southeast Alaska Conservation Council, Inc., 6 AN CAB 152 (Nov. 30, 1981) 88 I.D. 1027

Remand

When the record on appeal raises questions which may affect the validity of Federally created third-party interests, and when there is no evidence that a determination of validity has been made pursuant to Secretary's Order No. 3029, the Board will remand to the Bureau of Land Management for such determination.

Northway Natives, Inc., 5 AN CAB 147 (Jan. 5, 1981)
88 I.D. 14

Absent reasons justifying the contrary, where the parties to an appeal file a stipulation which resolves all the issues in the appeal and requests a remand to the Bureau of Land Management for amendment of the appealed decision so as to incorporate the matter stipulated, the Board will remand the appeal in order to allow the proposed amendment.

State of Alaska, Dept. of Transportation and Public Facilities, 5 AN CAB 281 (May 1, 1981)

Settlement Approval

When the Bureau of Land Management is the only agency of the Department of the Interior which is a party to the appeal, and a settlement agreement does not require or provide for future action or forbearance from action by any agency of the Department of the Interior, an appeal from a Decision to Issue Conveyance will be dismissed upon a stipulation for dismissal based upon such a settlement agreement, and no approval of the settlement agreement is required by the Board, or the Secretary or his delegate by provisions of 43 CFR 4.913(b).

State of Alaska, Dept. of Transportation and Public Facilities, 5 AN CAB 284 (May 4, 1981)

Standing

The appropriate test of standing to appeal a decision under ANCSA is not whether a person is an "aggrieved party," but whether a person "claims a property interest in land affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed" as required by 43 CFR 4.902.

Decisions made pursuant to ANCSA affect property interests differently, with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedStanding--Continued

test in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b)(1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

An individual claiming standing to appeal a § 17(b)(1) public easement decision must assert public use of the desired easement in order to distinguish it from a § 17(b)(2) private access right.

Joseph C. Manga et. al., 5 AN CAB 224 (Apr. 20, 1981)
88 I.D. 460

Patrick J. Bliss, 6 AN CAB 181 (Nov. 30, 1981)
88 I.D. 1039

The appropriate test for determining standing to appeal a decision made pursuant to ANCSA is whether a party "claims a property interest in land affected by a determination" appealable to this Board.

Where an assertion that a property interest is affected by a decision to convey is based on the effect of a possible future waiver of administration by the agency presently administering a lease, and such waiver is discretionary with the agency under § 14(g) of ANCSA, the alleged effect on the property interest is too speculative to meet the requirement of 43 CFR 4.902.

Ray DeVilbiss (Wolverine Grazing Association),
5 AN CAB 265 (Apr. 28, 1981) 88 I.D. 513

John L. Seemann, 5 AN CAB 290 (May 11, 1981)

The appropriate test of standing to appeal a decision under ANCSA is not whether a person is an "aggrieved party," but whether a person "claims a property interest in land affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed" as required by 43 CFR 4.902.

A person desiring to appeal a public easement decision can not claim a property interest in the land underlying the easement, because, pursuant to ANCSA, title to the land underlying the easement goes to the selecting Native corporation. Likewise, a potential appellant can not claim a private property interest in a § 17(b)(1) easement because these are public easements. The concept of private ownership of a public easement is a contradiction in terms.

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b)(1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

An individual claiming standing to appeal a § 17(b)(1) public easement decision must assert public

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

use of the desired easement in order to distinguish it from a § 17(b) (2) private access right.

Joseph C. Manga, 5 ANCAB 343 (June 26, 1981)

Decisions pursuant to ANCSA affect property interests differently, depending, in part, upon the section of the Act on which each decision is based. Application of the standing test in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b) (1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b) (1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as a "property interest affected" within the meaning of 43 CFR 4.902.

Where appellants seek a public access easement under § 17(b) (1) of ANCSA, they may rely on their patented homestead, located outside the conveyance, as a property interest for purposes of meeting the standing requirements of 43 CFR 4.902.

Where appellants claim that their homestead is affected by the Bureau of Land Management's failure to reserve a § 17(b) (1) public access easement, along a road used by appellants and the public, because in the absence of such an easement their present access route to the homestead may be cut off by the proposed conveyance to a Native corporation, this is a claim that their property interest is affected within the terms of 43 CFR 4.902.

Sec. 17(b) (2) of ANCSA assures that persons who have valid existing uses do not lose access rights because of the public easements provided by § 17(b) (1). The private right of access provided to holders of valid existing rights pursuant to § 17(b) (2) of ANCSA is separate from the right provided by § 17(b) (1) of public access routes. An individual claiming standing to appeal a public easement decision must assert public use of the desired easement to distinguish it from a private access right under § 17(b) (2). However, the possibility of protection under § 17(b) (2) does not preclude the holder of a property interest from asserting that an easement decision affects his interest so as to meet the standing requirements of 43 CFR 4.902.

Patricia and William Nordmark, 6 ANCAB 157 (Nov. 30, 1981) 88 I.D. 1028

When a municipality's "interest" in a particular tract of land is based only on the possibility that some day it may acquire the land under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, the municipality's "interest" is too speculative to constitute a "property interest" under 43 CFR 4.902.

The appropriate test of standing to appeal a decision under ANCSA is not whether a person is an "aggrieved party" but whether a person "claims a property interest in lands affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed."

The Act of Jan. 2, 1976, P.L. 94-204, 89 Stat. 1145, as amended, was clearly an amendment to ANCSA

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

and the standing requirements of the original Act (43 CFR 4.902) apply to the amendments.

City of Homer, 6 ANCAB 203 (Nov. 30, 1981) 88 I.D. 1047

CONVEYANCES

Generally

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and State of Alaska, 5 ANCAB 324 (June 26, 1981) 88 I.D. 636

Doyon Ltd., 5 ANCAB 368 (July 27, 1981)

Doyon, Ltd., 6 ANCAB 27 (Aug. 19, 1981)

Doyon, Ltd., 6 ANCAB 32 (Aug. 19, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 45 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 50 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 55 (Aug. 24, 1981)

Doyon Ltd., 6 ANCAB 60 (Aug. 24, 1981)

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

When lands have been selected by a Native corporation and approved by the Bureau of Land Management for conveyance under ANCSA, such lands may be excluded from conveyance only pursuant to provisions of ANCSA or implementing regulations which constitute an exception to the requirements of Secretary's Order No. 3029, as amended.

Exclusion of the disputed mining claims from conveyance, pending their adjudication, is not permitted under any provision of ANCSA or implementing regulations.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedCONVEYANCES--ContinuedEasements

The existence of a Revised Statutes Sec. 2477 right-of-way precludes neither the reservation of an overlapping § 17(b) public easement nor the conveyance of the underlying fee. Such reservation or conveyance does not affect the previously existing right-of-way.

The continued existence of a Revised Statutes Sec. 2477 right-of-way following conveyance of the underlying fee interest is entirely independent of any reservation, pursuant to § 17(b), of a public easement.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 307 (June 26, 1981) 88 I.D. 629

Valid Existing RightsGenerally

A right-of-way under 43 U.S.C. § 959 (1976), issued before conveyance under ANCSA of the underlying land, would be a valid existing right protected under § 14(g) of the Act.

Nelbro Packing Co., 5 ANCAB 174 (Mar. 9, 1981) 88 I.D. 352

The private right of access protected by § 17(b)(2) of ANCSA for holders of valid existing rights is separate from public access routes specifically identified pursuant to § 17(b)(1). Possible protection under § 17(b)(2) does not preclude an individual from asserting that a public easement decision affects his or her property interest so as to meet the standing test of 43 CFR 4.902.

Joseph C. Manga et. al., 5 ANCAB 224 (Apr. 20, 1981) 88 I.D. 460

Joseph C. Manga, 5 ANCAB 343 (June 26, 1981)

When a lease is identified in a Decision to Issue Conveyance as a § 14(g) interest, and the conveyance is made subject to such interest, then all rights the lessee holds under the terms of the lease, if valid, are protected and there remains no issue which the lessee may appeal as to the effect of the conveyance on the lease.

Ray DeVilbiss (Wolverine Grazing Association), 5 ANCAB 265 (Apr. 28, 1981) 88 I.D. 513

John L. Seemann, 5 ANCAB 290 (May 11, 1981)

Possible protection under § 17(b)(2) does not preclude an individual from asserting that a public easement decision affects his or her property interest so as to meet the standing test of 43 CFR 4.902.

Patrick J. Bliss, 6 ANCAB 181 (Nov. 30, 1981) 88 I.D. 1039

Third-Party Interests

Sec. 14(g) of ANCSA mandates identification, in conveyance documents issued pursuant to ANCSA, of only those interests issued by the United States or

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedCONVEYANCES--ContinuedValid Existing Rights--ContinuedThird-Party Interests--Continued

the State of Alaska. Alleged third-party interests derived from sources other than the United States or the State of Alaska are not within the scope of § 14(g) of ANCSA.

Departmental policy expressed in Secretary's Order No. 3029 and converted into the Departmental Manual at 601 DM 2.3 and 2.4 does not require the Bureau of Land Management to identify or adjudicate alleged third-party interests derived from sources other than the Federal Government or the State of Alaska.

Tetlin Native Corp., 5 ANCAB 197 (Apr. 14, 1981) 88 I.D. 442

Tetlin Native Corp., 5 ANCAB 212 (Apr. 15, 1981)

The existence of a Revised Statutes Sec. 2477 right-of-way precludes neither the reservation of an overlapping § 17(b) public easement nor the conveyance of the underlying fee. Such reservation or conveyance does not affect the previously existing right-of-way.

The continued existence of a Revised Statutes Sec. 2477 right-of-way following conveyance of the underlying fee interest is entirely independent of any reservation, pursuant to § 17(b), of a public easement.

Rights-of-way granted by Revised Statutes Sec. 2477 shall be identified in the decision to issue conveyance and in the conveyance document in the same manner as other third-party interests which the Bureau of Land Management need not adjudicate.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 307 (June 26, 1981) 88 I.D. 629

The Board will order the exclusion of a disputed Native allotment from the conveyance of lands pursuant to the Alaska Native Claims Settlement Act pending adjudication of the disputed allotment.

Clara Goodman, 6 ANCAB 17 (Aug. 5, 1981) 88 I.D. 718

Pursuant to the Departmental Manual 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

When an unpatented mining claim is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated such unpatented mining claims prior to conveyance.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DEFINITIONS

Public LandsGenerally

The Department of the Interior under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and State of Alaska, 5 ANCAB 324 (June 26, 1981) 88 I.D. 636

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon Ltd., 5 ANCAB 368 (July 27, 1981)

Doyon, Ltd., 6 ANCAB 27 (Aug. 19, 1981)

Doyon, Ltd., 6 ANCAB 32 (Aug. 19, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 45 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 50 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 55 (Aug. 24, 1981)

Doyon Ltd., 6 ANCAB 60 (Aug. 24, 1981)

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

"Public lands" as defined by § 3(e) of the Alaska Native Claims Settlement Act do not include lands identified for selection by the State of Alaska prior to Jan. 17, 1969.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

DISENROLLMENT

Metlakatla Natives

The provisions of the Alaska Native Claims Settlement Act specifically exclude members of the Metlakatla Tribe of the Annette Islands Reserve from benefits under the Act. Where appellant and her children periodically resided at Metlakatla, accepted benefits from the Metlakatla Tribe as tribal members, were enrolled members since 1968, and did not initiate efforts to terminate tribal membership until 1974, appellants were enrolled members of Metlakatla within the meaning of the Alaska Native Claims Settlement Act and were properly excluded from enrollment under the Act.

Corinne Mae Howell & Her Minor Children, Gary Arnold Howell, Richard Dwayne Howell, and Darcy Lynn Howell v. United States, 9 IBIA 3 (June 11, 1981) 88 I.D. 575

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DISENROLLMENT--Continued

Metlakatla Natives--Continued

Exclusion of appellant members of the Metlakatla Community from benefits under provisions of the Alaska Native Claims Settlement Act held not to be precluded by a contrary result reached in a prior Administrative Law Judge's decision in a similar case. The determination by the agency factfinder in the separate but similar situation is not binding upon the Board of Indian Appeals, which renders final decision for the Department in disenrollment appeals referred on appeal to the Board.

Corinne Mae Howell & Her Minor Children Gary Arnold Howell, Richard Dwayne Howell, and Darcy Lynn Howell v. United States, 9 IBIA 70 (Sept. 9, 1981) 88 I.D. 822

EASEMENTS

Access

Sec. 17(b) (2) of ANCSA protects the private right of access, provided for under existing law, to any valid right recognized by ANCSA.

Sec. 17(b) (2) of ANCSA assures that persons who have valid existing uses do not lose access rights because of the public easements provided by § 17(b) (1). The private right of access provided to holders of valid existing rights pursuant to § 17(b) (2) of ANCSA is separate from the right provided by § 17(b) (1) of public access routes. An individual claiming standing to appeal a public easement decision must assert public use of the desired easement to distinguish it from a private access right under § 17(b) (2). However, the possibility of protection under § 17(b) (2) does not preclude the holder of a property interest from asserting that an easement decision affects his interest so as to meet the standing requirements of 43 CFR 4.902.

Patricia and William Nordmark, 6 ANCAB 157 (Nov. 30, 1981) 88 I.D. 1028

Decision to Reserve

When reservation of public easements under § 17(b) of ANCSA is appealed and the issue has been remanded to the Bureau of Land Management for easement conformance pursuant to regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management subsequently renders a decision which modifies the public easements reserved, such modified decision supersedes the previous easement reservations and constitutes the final, appealable decision to reserve public easements under § 17(b) in a conveyance under ANCSA.

When the appealed issue of public easements reserved under § 17(b) of ANCSA, in the Decision to Issue Conveyance, has been remanded for easement conformance under regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management's easement conformance decision modifying the Decision to Issue Conveyance is published, those § 17(b) easement issues appealed from the initial Decision to Issue Conveyance become moot.

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedEASEMENTS--ContinuedProceduresConformance

When reservation of public easements under § 17(b) of ANCSA is appealed and the issue has been remanded to the Bureau of Land Management for easement conformance pursuant to regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management subsequently renders a decision which modifies the public easements reserved, such modified decision supersedes the previous easement reservations and constitutes the final, appealable decision to reserve public easements under § 17(b) in a conveyance under ANCSA.

When the appealed issue of public easements reserved under § 17(b) of ANCSA, in the Decision to Issue Conveyance, has been remanded for easement conformance under regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management's easement conformance decision modifying the Decision to Issue Conveyance is published, those § 17(b) easement issues appealed from the initial Decision to Issue Conveyance become moot.

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Public Easements

Since the purpose of a § 17(b) (1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b) (1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

The private right of access protected by § 17(b) (2) of ANCSA for holders of valid existing rights is separate from public access routes specifically identified pursuant to § 17(b) (1). Possible protection under § 17(b) (2) does not preclude an individual from asserting that a public easement decision affects his or her property interest so as to meet the standing test of 43 CFR 4.902.

An individual claiming standing to appeal a § 17(b) (1) public easement decision must assert public use of the desired easement in order to distinguish it from a § 17(b) (2) private access right.

Joseph C. Manga et. al., 5 ANCAB 224 (Apr. 20, 1981)
88 I.D. 460

Joseph C. Manga, 5 ANCAB 343 (June 26, 1981)

The existence of a Revised Statutes Sec. 2477 right-of-way precludes neither the reservation of an overlapping § 17(b) public easement nor the conveyance of the underlying fee. Such reservation or conveyance does not affect the previously existing right-of-way.

The continued existence of a Revised Statutes Sec. 2477 right-of-way following conveyance of the underlying fee interest is entirely independent of any reservation, pursuant to § 17(b), of a public easement.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 307 (June 26, 1981) 88 I.D. 629

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedEASEMENTS--ContinuedPublic Easements--Continued

Since the purpose of a § 17(b) (1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b) (1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as a "property interest affected" within the meaning of 43 CFR 4.902.

Where appellants seek a public access easement under § 17(b) (1) of ANCSA, they may rely on their patented homestead, located outside the conveyance, as a property interest for purposes of meeting the standing requirements of 43 CFR 4.902.

Where appellants claim that their homestead is affected by the Bureau of Land Management's failure to reserve a § 17(b) (1) public access easement, along a road used by appellants and the public, because in the absence of such an easement their present access route to the homestead may be cut off by the proposed conveyance to a Native corporation, this is a claim that their property interest is affected within the terms of 43 CFR 4.902.

Patricia and William Nordmark, 6 ANCAB 157 (Nov. 30, 1981)
88 I.D. 1028

Since the purpose of a § 17(b) (1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b) (1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

Possible protection under § 17(b) (2) does not preclude an individual from asserting that a public easement decision affects his or her property interest so as to meet the standing test of 43 CFR 4.902.

An individual claiming standing to appeal a § 17(b) (1) public easement decision must assert public use of the desired easement in order to distinguish it from a § 17(b) (2) private access right.

Patrick J. Bliss, 6 ANCAB 181 (Nov. 30, 1981)
88 I.D. 1039

ENROLLMENT

The provisions of the Alaska Native Claims Settlement Act defining the class of persons entitled to share in benefits under the Act are not ambiguous so as to require reference to the legislative history to determine whether persons becoming United States citizens after Dec. 18, 1971, the effective date of the Act, are entitled to be enrolled.

Interpretation of the Alaska Native Claims Settlement Act by the Bureau of Indian Affairs contemporaneous with the enactment of the statute and continued over the succeeding 9 years is relevant to a determination of the application to be given to the statute. The Agency refusal to enroll persons who were not United States citizens on Dec. 18, 1971, the effective date of the Act, is a reasonable application of the Act and of Departmental regulations implementing the Act, and gives the language of the statute

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedENROLLMENT--Continued

(43 U.S.C. § 1604 (1976)) its common and ordinary meaning.

United States v. Aimee Marion Bowen (Edenshaw) and Phyllis Josephine Kimball, 8 IBIA 218 (Feb. 12, 1981)
88 I.D. 261

NATIVE LAND SELECTIONSRegional SelectionsGenerally

Departmental regulations at 43 CFR 2653.5, insofar as they prescribe a specified course of action including publication, referral, investigation, conferring, reporting, etc., by the Department with regard to selections of public lands made pursuant to § 14(h)(1) of the Alaska Native Claims Settlement Act, cannot apply when the selected lands are not public lands and the selection applications must be rejected at the outset.

Doyon, Ltd., 6 AN CAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 AN CAB 129 (Oct. 22, 1981)

Allocations

Sec. 14(h)(8)(B) of ANCSA, which governs withdrawal and allocation of lands for selection by the Native regional corporation for southeastern Alaska, constitutes an exception to the requirement that lands withdrawn and allocated by the Secretary under § 14(h)(8) must be from unreserved and unappropriated lands outside areas withdrawn by §§ 11 and 16.

Oregon Portland Cement Co., 6 AN CAB 65 (Aug. 25, 1981)
88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 AN CAB 111 (Sept. 29, 1981)

Selection Limitations

Regulations in 43 CFR 2651.4(e) cannot be applied to permit a selecting Native corporation to exclude lands within unpatented mining claims after the selection period has terminated.

Oregon Portland Cement Co., 6 AN CAB 65 (Aug. 25, 1981)
88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 AN CAB 111 (Sept. 29, 1981)

Only unreserved and unappropriated public lands are available for selection under § 14(h)(1) of the Alaska Native Claims Settlement Act.

Doyon, Ltd., 6 AN CAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 AN CAB 129 (Oct. 22, 1981)

NAVIGABLE WATERS

The Bureau of Land Management is not bound to make its navigability determinations in conformity

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedNAVIGABLE WATERS--Continued

with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and State of Alaska, 5 AN CAB 324 (June 26, 1981) 88 I.D. 636

Doyon, Ltd., 5 AN CAB 368 (July 27, 1981)

Doyon, Ltd., 6 AN CAB 27 (Aug. 19, 1981)

Doyon, Ltd., 6 AN CAB 32 (Aug. 19, 1981)

Gana-a' Yoo, Ltd., 6 AN CAB 45 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 AN CAB 50 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 AN CAB 55 (Aug. 24, 1981)

Doyon, Ltd., 6 AN CAB 60 (Aug. 24, 1981)

Doyon, Ltd., 6 AN CAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 AN CAB 242 (Dec. 16, 1981) 88 I.D. 1105

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

Doyon, Ltd., 5 AN CAB 354 (July 24, 1981)

Northway Natives, Inc., 6 AN CAB 1 (Aug. 5, 1981)
88 I.D. 711

Doyon, Ltd., 6 AN CAB 138 (Oct. 30, 1981)

WITHDRAWALS AND RESERVATIONSWithdrawals for Native SelectionGenerally

Sec. 14(h)(8)(B) of ANCSA, which governs withdrawal and allocation of lands for selection by the Native regional corporation for southeastern Alaska, constitutes an exception to the requirement that lands withdrawn and allocated by the Secretary under § 14(h)(8) must be from unreserved and unappropriated lands outside areas withdrawn by §§ 11 and 16.

Oregon Portland Cement Co., 6 AN CAB 65 (Aug. 25, 1981)
88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 AN CAB 111 (Sept. 29, 1981)

APPEALS

(See also Administrative Procedure, Contracts, Grazing Permits & Licenses, Indian Probate, Indian Tribes, Rules of Practice, Torts, Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970--if included in this Index.)

Where Geological Survey issues an order directing appellant to pay back royalties attributable to an offshore oil and gas lease, and thereafter schedules a conference with appellant to discuss its order, a notice of appeal filed within 30 days of such conference will be regarded as timely.

Shell Oil Co., 52 IBLA 74 (Jan. 9, 1981)

A final Departmental appellate decision construing a regulation will be applied with prospective effect only where it materially alters the interpretation given the regulation by earlier administrative decisions and where it would be unfair or prejudicial to apply such decision retroactively.

Killian L. Huger, Jr., 52 IBLA 174 (Jan. 26, 1981)

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

United States v. William A. Reavely et al., 53 IBLA 320 (Mar. 25, 1981)

It is not necessary to make a separate ruling on each finding of fact and conclusion of law proposed by the parties to an administrative proceeding. It is sufficient if the decision summarizes the controlling principles of law and the facts relative thereto as established by the evidence adduced.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Geneva Barry et al., 54 IBLA 48 (Apr. 9, 1981)

APPEALS--Continued

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Richard J. Leumont, 54 IBLA 242 (Apr. 27, 1981) 88 I.D. 490

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not show with some particularity adequate reason for appeal and support the allegations with evidence showing error.

Rocky Mountain Natural Gas Co., Inc., 55 IBLA 3 (May 26, 1981)

Where a person moves from his record address and does not apprise BLM of a forwarding address, and a copy of a BLM decision affecting him is mailed to this last address of record and returned by the postal service as undeliverable, the decision is considered to have been "served" on him as of the date it is returned to BLM. 43 CFR 4.401(c). Accordingly, the deadline for filing a notice of appeal is 30 days after the date the decision is returned to BLM, and an appeal filed after that date is properly dismissed as untimely.

Reg Whitson, 55 IBLA 5 (May 26, 1981)

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant

APPEALS--Continued

has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167
(Aug. 27, 1981) 88 I.D. 772

When an appeal to the Board of Land Appeals from a decision made by an official of the Bureau of Land Management is properly filed, that official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over the case is restored by Board action disposing of the appeal.

Sierra Club, 57 IBLA 288 (Aug. 31, 1981)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Superior Oil Co., 57 IBLA 404 (Sept. 14, 1981)

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of service of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

Lynn Dahle, 58 IBLA 73 (Sept. 22, 1981)

Neither the State of Alaska nor an instrumentality thereof has standing to appeal a decision which recognizes that full title to a parcel of land is in the State, absent a showing of injury in fact from such a decision.

State of Alaska, 58 IBLA 118 (Sept. 24, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166
(Sept. 28, 1981)

A finding by BLM that some statutory mechanism has been triggered which automatically divests a right does not and cannot mean that the adversely affected party is denied recourse to the appellate process. The Board of Land Appeals is the exclusive arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Office of the Solicitor may create or deny the right of appeal to the Board.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981)
88 I.D. 879

APPEALS--Continued

Under 43 CFR 4.410, a party must be adversely affected by a decision of an officer of the Bureau of Land Management in order to have the right to appeal to the Board of Land Appeals.

California State Lands Commission, 58 IBLA 213
(Sept. 29, 1981)

Service of a BLM decision is accomplished when it is delivered to the addressee's last address of record by certified mail and such delivery is substantiated by postal authorities, regardless of whether it was in fact received by the person to whom it was addressed, and the prescribed period for initiating an appeal from such decision commences on the date of such delivery.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

The Board of Land Appeals will not dismiss or set aside a decision by the Bureau of Land Management holding an appellant liable for an innocent mineral trespass solely because a notice of trespass cited a criminal statute.

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Galen B. Brazington, 59 IBLA 255 (Oct. 29, 1981)

Nequoa Ass'n, 60 IBLA 386 (Dec. 23, 1981)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. John Burt et al., 59 IBLA 326
(Nov. 5, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

A.C.C.T.S., 60 IBLA 1 (Nov. 12, 1981)

APPEALS--Continued

An appellant or intervenor requesting this Board to reverse a Bureau of Land Management decision regarding the inclusion or exclusion of a unit of land as a wilderness study area must show the decision to be based on a clear and specific error of law or fact, otherwise the Board will affirm.

Merrill G. Hastings, 60 IBLA 54 (Nov. 17, 1981)

The 30-day period within which an appeal from a decision classifying lands as being within a KGS must be initiated commences upon service on the lessee (or co-lessee) of record of a copy of the decision. Both the lessee and his agent, including the holder of operating rights under the lease, are subject to the 30-day deadline.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of that portion of a State Director's decision which implements an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department and the appeal will be dismissed insofar as it relates to this issue.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

APPLICATIONS AND ENTRIES

GENERALLY

An application for an Indian allotment, filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(h) and (d) or the petition for classification required by 43 CFR 2531.2 may be rejected.

Roy M. Miller, Jr., 52 IBLA 52 (Jan. 6, 1981)

Where an applicant for a mineral patent has been requested to provide additional information and has not done so after 18 months, the Bureau of Land Management may properly deny his request for a further extension of time to submit that information and reject his mineral patent application without prejudice to applicant's right to file a proper application in the future. But when the pendency of an appeal from that decision has stayed its effectiveness beyond the time needed by the applicants to obtain the necessary information, the Board may give the applicants 10 additional days to file the information with BLM before the rejection of their application becomes effective.

Wilbur G. Hallauer et al., 52 IBLA 202 (Jan. 26, 1981)

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

A copy of a document is not considered to be among the number filed if it is only received and date-stamped and returned to an applicant as evidence of receipt. Such acknowledgement of receipt by Bureau of

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Land Management personnel does not constitute a determination that the filing was complete or that all the documents recited in the cover letter were included. BLM is not required to retain that copy of the document, contrary to an applicant's instructions, in order to make the filing complete.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

Applications for Indian allotments on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1, are properly rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

BLM properly rejects an application to purchase mineral rights where the record shows that these rights were previously sold to a private party. In the absence of any proof to the contrary, it is presumed that the sale of these interests was regularly consummated by the issuance of a deed or other appropriate instrument of conveyance to the private party.

Watkins Hutcheson Building Co., Inc., 54 IBLA 137 (Apr. 17, 1981)

An application for land withdrawn from appropriation under the public land laws is properly rejected and not held pending possible future availability of the land.

An application for land filed but not adjudicated prior to restoration of the land to appropriation under the public land laws under a public land order which expressly provides that all applications filed prior to restoration shall be considered as simultaneously filed as of the date of restoration may be considered as filed as of the date of restoration.

Vaughn K. Leavitt et al., 55 IBLA 59 (May 29, 1981)

An application to purchase offshore royalty oil, submitted in response to a notice published in the Federal Register on Jan. 14, 1980, is properly rejected where the applicant's runs to stills per calendar day exceed the applicant's refining capacity per calendar day.

Quitman Refining Co., 57 IBLA 53 (Aug. 17, 1981)

An Indian allotment application is properly rejected where it requests lands which are not available for entry because they have previously been noted on BLM plats under a recreational and public purposes classification pursuant to 43 U.S.C. § 869 (1976).

Marjorie N. Underwood, 58 IBLA 21 (Sept. 16, 1981)

FILING

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)

--Continued

APPLICATIONS AND ENTRIES--ContinuedFILING--Continued

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)

Under 43 CFR 3112.2-2(h) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to meet the \$10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Orderly administration of the oil and gas leasing program demands that filing fees be paid to BLM in a manner consonant with administrative convenience and in accordance with the regulations. This necessarily requires that BLM cannot, without prior written instruction, transfer money paid for one purpose to another use, e.g., money paid for one month's simultaneous drawing to another month's simultaneous drawing.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

Under 43 CFR 3112.2-2(h) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the \$10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Allen W. Taylor, 56 IBLA 143 (July 20, 1981)

VALID EXISTING RIGHTS

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1971, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations, amended in 1976 and 1979, with retroactive effect.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

VESTED RIGHTS

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Christian F. Murer, 57 IBLA 333 (Sept. 1, 1981)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981)

APPRAISALS

Comparison of the subject communications site right-of-way with other similar sites under lease is an appropriate appraisal method for determining fair market value when current and reliable rental data for comparable sites is available.

Appraisals of rights-of-way for communications sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and appellant fails to show by convincing evidence that the charges are excessive.

Dwight L. Zundel, 55 IBLA 218 (June 18, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. However, where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle K, Inc., 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

An appraisal of a right-of-way for a natural gas pipeline, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), will be upheld on appeal if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. However, where the Bureau has determined the highest and best use of the land in order to evaluate the comparability of other lands, and an appellant raises sufficient doubt as to the accuracy of that determination, the case may be remanded for the

APPRAISALS--Continued

Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Western Slope Gas Co., 61 IBLA 57 (Dec. 31, 1981)

ATTORNEYS

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by a corporation that does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

Allen Duncan, 53 IBLA 101 (Mar. 4, 1981) 88 I.D. 345

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

BALD EAGLE PROTECTION ACT

Only those groups which have received Federal acknowledgement of their Indian tribal status constitute Indian tribes, for purposes of sec. 2 of the Bald Eagle Protection Act.

Indian Tribal Status under the Bald Eagle Protection Act, M-36934 (Feb. 26, 1981) 88 I.D. 338

BUREAU OF INDIAN AFFAIRS

(See also Indian Probate--if included in this Index.)

GENERALLY

Only reservations listed in 25 CFR 11.1(a) are governed by the law and order provisions codified in secs. 11.1 through 11.87 of 25 CFR Part 11. Because the Blackfeet Reservation is not listed thereunder, the Blackfeet Tribe may remove a tribal judge from its tribal court without regard to the procedural requirements found at 25 CFR 11.4.

The fact that judges of the Blackfeet Tribal Court, which is not a CFR court, are financed in part by Federal funds, does not render such judges subject to the law and order regulations found at 25 CFR 11.1(d) and 25 CFR 11.4. The Blackfeet Tribe has its own ordinance governing the removal of judges, which has been approved by the Secretary, and such ordinance is exclusively controlling in such matters.

Lenore Salois v. Area Director, Billings Area Office, 8 IBIA 283 (May 15, 1981)

ADMINISTRATIVE APPEALS

Generally

In reviewing action of the Bureau of Indian Affairs in raising grazing rental rates, the Board of Indian Appeals should overturn the action only if it is found to be unreasonable. As long as the Bureau's action is supported in law and by substantial evidence, it would be an inappropriate intrusion into the Bureau's

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Generally--Continued

function for the Board to substitute its judgment for the agency's.

Fort Berthold Land and Livestock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 230 (Feb. 20, 1981) 88 I.D. 315

While it is true that the Klamath Termination Act, Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered inapplicable to Klamath tribal members the Secretary's usual jurisdiction over Indian heirship determinations as set forth in 25 U.S.C. §§ 372-373 (1976) (see 25 U.S.C. § 564h), Congress, by the more recent Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), specifically empowered the Secretary of the Interior to determine the rightful heirs of deceased Klamath enrollees entitled to a share of judgment funds payable from the United States for the limited purpose of seeing that such funds are distributed to the heir or heirs so determined.

The Secretary has no statutory authority to pay creditors' claims against estates of deceased Klamath Indians out of judgment funds distributable by the Secretary under the Act of Oct. 1, 1965, 79 Stat. 897.

Gertrude E. Sherman v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 25 (June 29, 1981) 88 I.D. 619

Although the Klamath Termination Act of Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered the Secretary's usual probate jurisdiction inapplicable to Klamath Indians, the Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), gave the Secretary limited jurisdiction to determine the heirs of deceased Klamath enrollees pursuant to his duty to distribute judgment funds.

Yvonne Weiser et al. v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 76 (Sept. 29, 1981)

Appellant business lessee of tribal trust lands held not to be an interested party affected by a final administrative action of an official of the Bureau of Indian Affairs within the meaning of Interior Board of Indian Appeals practice rule sec. 4.331 (46 FR 7337 (Jan. 23, 1981)) so as to be entitled to seek review of agency determination that lessor Indian tribe had failed to legally enact a tribal law and order code.

Marlin D. Kuykendall v. Comm'r of Indian Affairs and Yavapai-Prescott Tribe, 9 IBIA 90 (Oct. 23, 1981)

Filing

Mandatory Time Limit

Because Departmental regulations setting mandatory time limits for filing appeals notices in administrative matters before the Bureau of Indian Affairs may not be relaxed to permit late filing, where appellant failed to give timely notice of appeal from decision to raise rental rate on leased trust lands, his subsequent attempts to appeal by seeking review of enforcement orders requiring payment of the increased rental were ineffective.

Ross Hamlin v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 16 (June 12, 1981)

BUREAU OF LAND MANAGEMENT

(See also Mineral Leasing Act--if included in this Index.)

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

Each request for an extension of time to file a document must be carefully considered on its own merits, with due regard for and consideration of the rights of the parties involved.

P. Peter Zoch, 60 IBLA 150 (Nov. 24, 1981)

BUREAU OF RECLAMATION

(See also Irrigation Claims--if included in this Index.)

GENERALLY

Under the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1976), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, such as the Bureau of Reclamation (now the Water and Power Resources Service), the consent of the Secretary of the Interior is necessary under the Act for leasing of the land.

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation (now the Water and Power Resources Service) requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, such stipulation must be supported by valid reasons weighed with due regard for the public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

Mardam Exploration, Inc., 52 IBLA 296 (Feb. 9, 1981)

Where an acquired lands noncompetitive oil and gas lease offer is partially rejected on the basis of a recommendation made by the Bureau of Reclamation and merely concurred in by the Forest Service and on appeal the offeror alleges that the present policy of the Bureau of Reclamation is to lease with appropriate stipulations and the record fails to support adequately the original recommendation, the case will be remanded in order to determine whether a lease may issue for such lands.

Esdras K. Hartley, 57 IBLA 293 (Aug. 31, 1981)

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

Jan Christian Sykes, 55 IBLA 23 (May 26, 1981)

Terry Burl Fryrear, 58 IBLA 94 (Sept. 24, 1981)

Marvin Coy Gifford et al., 58 IBLA 98 (Sept. 24, 1981)

Lula Lorene McCracken Slowey, 58 IBLA 202 (Sept. 29, 1981)

Betsy Romaine Beville, 58 IBLA 260 (Oct. 6, 1981)

William Milton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarman, 59 IBLA 182 (Oct. 27, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

Gladys Lee Cardwell Gifford, Betty Ann Gifford Jarman, 55 IBLA 332 (June 26, 1981)

COAL LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

GENERALLY

Under the provisions of 30 U.S.C. § 188a (1976) accrued rentals on mineral leases are to be prorated on a monthly basis where the failure to file a timely surrender was not due to a lack of reasonable diligence on the part of the lessee.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981)
88 I.D. 24

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1971, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations, amended in 1976 and 1979, with retroactive effect.

A coal prospecting permittee who applies for a coal lease is entitled to a hearing before an Administrative Law Judge before his application is rejected, where the permittee alleges that the application contains data that commercial quantities of coal exist on the lands; however, where the permittee alleges that there is coal in commercial quantities in certain lands as measured by the mining industry standard BLM and Survey should have the opportunity to consider whether

COAL LEASES AND PERMITS--Continued

GENERALLY--Continued

commercial quantities as measured by the mining industry is sufficient to comply with commercial quantities as defined in 43 CFR 3430.1-2.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

CANCELLATION

An ambiguous regulation relating to "the proper office" in which to file a relinquishment of a coal lease should not be interpreted to the detriment of a coal lessee who sought to comply with its provisions.

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a duly promulgated regulation of this Department. Where, however, the regulation was not properly promulgated, is lacking in statutory basis, and has been consistently ignored in actual practice, that regulation will be accorded no force or effect.

Under the provisions of 30 U.S.C. § 188a (1976) accrued rentals on mineral leases are to be prorated on a monthly basis where the failure to file a timely surrender was not due to a lack of reasonable diligence on the part of the lessee.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981)
88 I.D. 24

DILIGENCE

Although Congress revised the provision governing readjustment of federal coal leases in 1976, the deletion of the clause "unless otherwise provided by law at the time of expiration of such periods" from sec. 7 of the MLA (30 U.S.C. § 207) did not alter the Secretary's obligation not to establish any lease terms contrary to law in readjusting a coal lease.

The legislative history of sec. 6 of the Federal Coal Leasing Amendments Act shows that the revision of sec. 7 of the MLA (30 U.S.C. § 207) was not retroactive, but applied to new leases and to "old" leases upon readjustment. The ten-year production period and revised royalty rates of amended sec. 7 must be imposed on "old" coal leases at readjustment. The legislative history to the 1978 coal leasing revisions (Act of Oct. 30, 1978) discloses that Congress understood and acted on the assumption that the amended sec. 7 royalty rates did apply to all "old" leases upon readjustment.

Whether Leases Issued Prior to August 4, 1976, Subject to Readjustment after that Date must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, M-36939 (Sept. 17, 1981) 88 I.D. 1003

LEASES

A coal prospecting permittee who applies for a coal lease is entitled to a hearing before an Administrative Law Judge before his application is rejected, where the permittee alleges that the application contains data that commercial quantities of coal exist on the lands; however, where the permittee alleges that there is coal in commercial quantities in certain lands as measured by the mining industry standard BLM and Survey should have the opportunity to consider whether commercial quantities as measured by the mining industry is sufficient to comply with commercial quantities as defined in 43 CFR 3430.1-2.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

COAL LEASES AND PERMITS--Continued

LEASES--Continued

Coalbed gas is not included in a coal lease under the MLA. In the coal leasing provision of the MLA, Congress did not provide for a coal lessee's extraction of minerals related to or associated with coal. 30 U.S.C. § 201 (Supp. II 1978). This provision does not authorize a coal lessee's extraction of coalbed gas, other than the venting of the gas required by mine health and safety laws and regulations.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981)

88 I.D. 538

A coal prospecting permittee who applies for a coal lease, alleging with supportive data that there is coal in commercial quantities within certain lands in its permit, is entitled to a hearing conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before its application may be finally rejected because it has not shown coal in commercial quantities.

A preference right lease applicant must be allowed to perform additional drilling tests to prove that it discovered commercial quantities of coal during the term of its prospecting permit even though that permit has expired, where the record reflects that a satisfactory demonstration of such discovery was made under the regulatory standards in effect during the term of the permit and revised regulations imposing more stringent requirements of proof of the discovery are applied to the lease application after expiration of the permit.

Hiko Bell Mining and Oil Co., 55 IBLA 324 (June 26, 1981)

PERMITS

Generally

Limitation of a coal prospecting permit to "unclaimed, undeveloped" lands restricts it to lands without valid, vested rights, existing at the time of issuance of the permit, which are adverse to the prospecting permit which is sought, and any preference right lease which may be earned pursuant to such a permit.

A prospecting permit may be issued for coal for which there is no valid, adverse claim at the time of issuance, notwithstanding the existence then of non-adverse claims, entries, or leases.

Issuance of a prospecting permit is presumed to be regular if no valid, adverse interest appeared in the land office records at the time of issuance of the permit.

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits and Preference Right Leases for Coal and Phosphate (Modifying Solicitor's Opinion M-36893 of Aug. 2, 1977, and its Supplement of Nov. 19, 1979, upon the same subject): The "Unclaimed, Undeveloped" Issue, M-36893 (Supp. II) (Jan. 8, 1981)

88 I.D. 247

A coal prospecting permittee who applies for a coal lease is entitled to a hearing before an Administrative Law Judge before his application is rejected, where the permittee alleges that the application contains data that commercial quantities of coal exist on the lands; however, where the permittee alleges that there is coal in commercial quantities in certain lands as measured by the mining industry standard BLM and Survey should have the opportunity to consider whether

COAL LEASES AND PERMITS--Continued

PERMITS--Continued

Generally--Continued

commercial quantities as measured by the mining industry is sufficient to comply with commercial quantities as defined in 43 CFR 3430.1-2.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

A coal prospecting permittee who applies for a coal lease, alleging with supportive data that there is coal in commercial quantities within certain lands in its permit, is entitled to a hearing conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before its application may be finally rejected because it has not shown coal in commercial quantities.

A preference right lease applicant must be allowed to perform additional drilling tests to prove that it discovered commercial quantities of coal during the term of its prospecting permit even though that permit has expired, where the record reflects that a satisfactory demonstration of such discovery was made under the regulatory standards in effect during the term of the permit and revised regulations imposing more stringent requirements of proof of the discovery are applied to the lease application after expiration of the permit.

Hiko Bell Mining and Oil Co., 55 IBLA 324 (June 26, 1981)

READJUSTMENT

Although Congress revised the provision governing readjustment of federal coal leases in 1976, the deletion of the clause "unless otherwise provided by law at the time of expiration of such periods" from sec. 7 of the MLA (30 U.S.C. § 207) did not alter the Secretary's obligation not to establish any lease terms contrary to law in readjusting a coal lease.

The legislative history of sec. 6 of the Federal Coal Leasing Amendments Act shows that the revision of sec. 7 of the MLA (30 U.S.C. § 207) was not retroactive, but applied to new leases and to "old" leases upon readjustment. The ten-year production period and revised royalty rates of amended sec. 7 must be imposed on "old" coal leases at readjustment. The legislative history to the 1978 coal leasing revisions (Act of Oct. 30, 1978) discloses that Congress understood and acted on the assumption that the amended sec. 7 royalty rates did apply to all "old" leases upon readjustment.

Whether Leases Issued Prior to August 4, 1976, Subject to Readjustment after that Date must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, M-36939 (Sept. 17, 1981) 88 I.D. 1003

RENTALS

An ambiguous regulation relating to "the proper office" in which to file a relinquishment of a coal lease should not be interpreted to the detriment of a coal lessee who sought to comply with its provisions.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981) 88 I.D. 24

COAL LEASES AND PERMITS--Continued

ROYALTIES

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is further defined as the gross sales price at the mining site without any deduction therefrom of overhead sales costs or any other business expense, this royalty base includes the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 where the selling price is increased by that amount or where the seller is reimbursed for that amount by the buyer.

The rulemaking procedures in 5 U.S.C. § 553 (1976) do not apply to administrative interpretations which conclude that the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 is to be included as part of the royalty base under Indian coal leases.

Peabody Coal Co., 53 IBLA 261 (Mar. 23, 1981)

Although Congress revised the provision governing readjustment of federal coal leases in 1976, the deletion of the clause "unless otherwise provided by law at the time of expiration of such periods" from sec. 7 of the MLA (30 U.S.C. § 207) did not alter the Secretary's obligation not to establish any lease terms contrary to law in readjusting a coal lease.

The legislative history of sec. 6 of the Federal Coal Leasing Amendments Act shows that the revision of sec. 7 of the MLA (30 U.S.C. § 207) was not retroactive, but applied to new leases and to "old" leases upon readjustment. The ten-year production period and revised royalty rates of amended sec. 7 must be imposed on "old" coal leases at readjustment. The legislative history to the 1978 coal leasing revisions (Act of Oct. 30, 1978) discloses that Congress understood and acted on the assumption that the amended sec. 7 royalty rates did apply to all "old" leases upon readjustment.

Whether Leases Issued Prior to August 4, 1976, Subject to Readjustment after that Date must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, M-36939 (Sept. 17, 1981) 88 I.D. 1003

COLOR OR CLAIM OF TITLE

GENERALLY

A claim under the Color of Title Act, 43 U.S.C. § 1068 (1976), has not been held in peaceful adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to claimant or a predecessor.

Where a predecessor in interest to a color-of-title claimant lacked good faith in 1906 because he had reason to know that title to the land remained in the United States, a 1904 withdrawal immediately foreclosed any subsequent color-of-title claim.

John S. Cluett, 52 IBLA 141 (Jan. 16, 1981)

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

A class 1 color-of-title claim requires good faith, peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors. When the applicant fails to produce such a document, the application must be rejected.

Anthony T. Ash, 52 IBLA 210 (Jan. 30, 1981)

Charles M. Schwab, 55 IBLA 8 (May 26, 1981)

A class 2 color-of-title application for an unpatented mining claim may not be rejected where the sole basis for the rejection is the conclusion of the Bureau of Land Management that the three words "entered for patent" contained in an Aug. 13, 1900, deed in the applicant's chain of title constituted constructive knowledge that title was in the United States and that the grantee therefore was not holding in good faith.

Cripple Creek Gold Production Corp., 53 IBLA 188 (Mar. 17, 1981)

Where the record does not show any instrument purporting on its face to convey the land, sought under a color-of-title application pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1976), not later than Jan. 1, 1901, the applicant has not made out a meritorious class 2 color-of-title claim.

Ray Wheeler, Ila Gene Wheeler, 55 IBLA 370 (June 26, 1981)

An applicant under the Color of Title Act, 43 U.S.C. § 1068 (1976), for a patent of Federal land must establish peaceful adverse possession of the land claimed. Where a tract of public land is divided by a fence in place for 40 years, which marks the limit of claimant's possession, his claim is properly limited to the land on the side of the fence which he has occupied and improved.

Grant Howe, 56 IBLA 145 (July 20, 1981)

To satisfy the requirements of a class 1 claim under the Color of Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied.

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimant or a predecessor.

Lester and Betty Stephens, 58 IBLA 14 (Sept. 16, 1981)

COLOR OR CLAIM OF TITLE--Continued

ADVERSE POSSESSION

An applicant under the Color of Title Act, 43 U.S.C. § 1068 (1976), for a patent of Federal land must establish peaceful adverse possession of the land claimed. Where a tract of public land is divided by a fence in place for 40 years, which marks the limit of claimant's possession, his claim is properly limited to the land on the side of the fence which he has occupied and improved.

Grant Howe, 56 IBLA 145 (July 20, 1981)

Adverse possession cannot be asserted against the United States. Mere occupancy of public lands and the making of improvements thereon give no vested right against the United States. An occupant of Federal land must show that he occupies the same under some proceeding or law that at least authorized his right of possession or law.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

APPLICATIONS

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to claimant or a predecessor.

Where a predecessor in interest to a color-of-title claimant lacked good faith in 1906 because he had reason to know that title to the land remained in the United States, a 1904 withdrawal immediately foreclosed any subsequent color-of-title claim.

John S. Cluett, 52 IBLA 141 (Jan. 16, 1981)

A class 1 color-of-title claim requires good faith, peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors. When the applicant fails to produce such a document, the application must be rejected.

An instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained. A color-of-title application is properly rejected where the claimed land is not described in deeds produced to support an applicant's claim.

Anthony T. Ash, 52 IBLA 210 (Jan. 30, 1981)

Charles M. Schwab, 55 IBLA 8 (May 26, 1981)

A class 2 color-of-title application for an unpatented mining claim may not be rejected where the sole basis for the rejection is the conclusion of the Bureau of Land Management that the three words "entered for patent" contained in an Aug. 13, 1900, deed in the applicant's chain of title constituted constructive knowledge that title was in the United States and that the grantee therefore was not holding in good faith.

Cripple Creek Gold Production Corp., 53 IBLA 188 (Mar. 17, 1981)

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS--Continued

Where the record does not show any instrument purporting on its face to convey the land, sought under a color-of-title application pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1976), not later than Jan. 1, 1901, the applicant has not made out a meritorious class 2 color-of-title claim.

Ray Wheeler, Illa Gene Wheeler, 55 IBLA 370 (June 26, 1981)

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimant or a predecessor.

Lester and Betty Stephens, 58 IBLA 14 (Sept. 16, 1981)

CULTIVATION

To satisfy the requirements of a class 1 claim under the Color of Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied.

Lester and Betty Stephens, 58 IBLA 14 (Sept. 16, 1981)

DESCRIPTION OF LAND

An instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained. A color-of-title application is properly rejected where the claimed land is not described in deeds produced to support an applicant's claim.

Anthony T. Ash, 52 IBLA 210 (Jan. 30, 1981)

Charles M. Schwab, 55 IBLA 8 (May 26, 1981)

GOOD FAITH

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to claimant or a predecessor.

Where a predecessor in interest to a color-of-title claimant lacked good faith in 1906 because he had reason to know that title to the land remained in the United States, a 1904 withdrawal immediately foreclosed any subsequent color-of-title claim.

John S. Cluett, 52 IBLA 141 (Jan. 16, 1981)

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH--Continued

A class 2 color-of-title application for an unpatented mining claim may not be rejected where the sole basis for the rejection is the conclusion of the Bureau of Land Management that the three words "entered for patent" contained in an Aug. 13, 1900, deed in the applicant's chain of title constituted constructive knowledge that title was in the United States and that the grantee therefore was not holding in good faith.

Cripple Creek Gold Production Corp., 53 IBLA 188 (Mar. 17, 1981)

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimant or a predecessor.

Lester and Betty Stephens, 58 IBLA 14 (Sept. 16, 1981)

IMPROVEMENTS

To satisfy the requirements of a class 1 claim under the Color of Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied.

Lester and Betty Stephens, 58 IBLA 14 (Sept. 16, 1981)

COMMUNICATION SITES

Comparison of the subject communications site right-of-way with other similar sites under lease is an appropriate appraisal method for determining fair market value when current and reliable rental data for comparable sites is available.

Appraisals of rights-of-way for communications sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and appellant fails to show by convincing evidence that the charges are excessive.

Dwight L. Zundel, 55 IBLA 218 (June 18, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

COMMUNICATION SITES--Continued

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. However, where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone and Telegraph Co. (On Reconsideration), 59 IBLA 343 (Nov. 5, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

CONSTITUTIONAL LAW

GENERALLY

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Ione M. Brown, 52 IBLA 44 (Jan. 6, 1981)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Lowell L. Patten, 52 IBLA 299 (Feb. 10, 1981)

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

William C. Bahny, 56 IBLA 190 (July 20, 1981)

Shirley Thompson, Duane R. Thompson, 57 IBLA 154 (Aug. 25, 1981)

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

DUE PROCESS

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

--Continued

CONSTITUTIONAL LAW--ContinuedDUE PROCESS--ContinuedRupert Thorne, 58 IBLA 319 (Oct. 16, 1981)Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial Bureau of Land Management decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements.

Gary Willis, 56 IBLA 217 (July 22, 1981)

Mining claimants who have not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 have no due process right to an evidentiary hearing before the Department of the Interior to show that their actual intent not to abandon rebuts that section's conclusive presumption of abandonment, since the Department is duty-bound to enforce the conclusiveness of the statute's presumption whenever noncompliance has occurred, and any such hearing would be valueless.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)CONTESTS AND PROTESTS

(See also Administrative Procedure, Rules of Practice--if included in this Index.)

GENERALLY

A sufficient prima facie case by the Government does not require positive proof that there has been no discovery made or that the mining claim is nonmineral in character. Upon the Government's presentation of a prima facie case, the burden shifts to the claimant to prove by a preponderance of the evidence that he indeed has effected a discovery of a valuable mineral deposit within the limits of the claim.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be sustained on the basis of the protestants' allegation that they are the owners of a conflicting claim which now is deemed abandoned and void as a matter of law.

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

Where the Government contests the validity of a mining claim, it bears only the burden of establishing a prima facie case of lack of discovery; the burden then shifts to the claimant to overcome the Government's showing by a preponderance of the evidence. A prima facie case is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

United States v. Leon Moyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)CONTRACTS

(See also Appeals, Claims Against the United States, Delegation of Authority, Labor, Rules of Practice--if included in this Index.)

GENERALLY

"Interest in an oil and gas lease or offer." Where an oil and gas lease offeror in a written agreement gives another person a security interest in any lease issued pursuant to an offer filed under the agreement to secure only payment of lease rentals advanced by that person, that person does not have an interest in the lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

Warren R. Haas, 57 IBLA 247 (Aug. 28, 1981)CONSTRUCTION AND OPERATIONGenerally

The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

Ilean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedActions of Parties

Where a contractor alleged that differing site conditions were encountered in constructing bored tunnels for the Navajo Indian Irrigation Project and resolution of the question as to what the contract indicated turned on the construction to be placed on the specifications and drawings relating to the nature of the support required to support the tunnels, as well as upon a Government estimate that approximately 80 percent of the tunnels would require support other than rockbolts, the Board found the contract to have indicated that the deterioration and disintegration encountered in driving the tunnels would be primarily of a surficial nature. In so finding the Board noted that in the disputed area the contract appears to be susceptible of more than one reasonable interpretation and that within the zones of reasonableness the Government as the author has to share the major responsibility for communicating its intentions as well as the main risk of failure to carry out that responsibility. Heavily weighted by the Board in reaching its decision was the fact that all four of the lowest bidders appeared to have construed the contract to indicate that the tunnels could be supported virtually entirely with rockbolts and that that construction was apparently known to the project construction engineer at the time of bid opening based upon his analysis of the bids received.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

A termination for default of a seeding contract is found to be proper where (i) the appellant fails to show that the work ordered by the contracting officer's representative was not required by the technical specifications; (ii) the time allowed for performance of the contract had passed by the time the notice of termination was issued; and (iii) no excusable cause of delay had been shown to exist.

Appeal of Building Maintenance Specialist, Inc., IBCA-1397-9-80 (June 15, 1981)

Where an appellant acknowledges that it received a purchase order calling for moving Government-owned furniture and furnishings shortly prior to the move and the record shows that without making a protest of any kind the contractor proceeded with the move and that it subsequently billed the Government for the services rendered in accordance with the rate stated in the purchase order, the Board finds the purchase order to constitute the agreement of the parties.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981) 88 I.D. 979

Allowable Costs

Where a cost-plus-fixed-fee contract expressly provides for the payment of finally negotiated overhead rates notwithstanding the foregoing provisions which include the limitation of cost provision, the Board finds that a claim for additional overhead costs is not subject to the limitation of the contract estimated costs.

Under a cost-plus-fixed-fee contract where indirect costs are disallowed as excessive or not directly related to the performance of the contract, the Board finds the determination of allowable costs to improperly apply the standard for direct costs to indirect

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedAllowable Costs--Continued

costs and on review of the costs in question finds entitlement to a portion of the disallowed costs.

Appeal of Dynadyne, Inc., IBCA-1329-1-80 (Apr. 8, 1981) 88 I.D. 423

Where the invitation for bids instructs potential bidders to submit bids on each of three schedules independent of the other, and the bidder to whom the contract was ultimately awarded incurs additional cost as a result of anticipation of award of one of the schedules not included in the contract awarded, the Board holds that such cost must be borne by the contractor.

Appeal of Valley Steel Builders, Inc., IBCA-1275-6-79 (Apr. 29, 1981) 88 I.D. 518

Under a cost sharing contract wherein the Government agreed to reimburse approximately one-third of a refiner's cost of demonstrating a process of recycling waste oil into commercial end products and requiring the contractor to document the process in a final report to be made available to the public, the Board finds that the credits and rebates general provision does not entitle the Government to a share of the profits from the sale of the end products because the schedule provisions for payments to the contractor take precedence over the general provisions, and the allowance of the credit claimed by the Government would require a strained interpretation of the contract terms to require appellant's contract performance at little or no cost to the Government.

Appeal of Shale Development Corp., IBCA-1256-3-79 (May 18, 1981)

Under a cost-plus-fixed-fee contract wherein the Government has agreed to reimburse the contractor for its allowable costs not exceeding a ceiling amount for reimbursement, the Board finds the disallowance of costs alleged to have resulted from an unauthorized change to have been improper because the otherwise allowable costs exceeded the contract ceiling amount by more than the disallowance.

Appeal of IRT Corp., IBCA-1347-4-80 (Sept. 25, 1981) 88 I.D. 877

Under two cost-no-fee contracts with an educational institution requiring the work to be done in accordance with appellant's proposals and providing for a fixed-dollar amount to be paid for overhead expenses, the Board denies claimed overhead expenses attributable to the terminated portion of the performance time under the contracts and denies recovery as direct expense the salary of the project director because neither proposal contemplated this expense to be a direct cost.

Appeal of Washington State University, IBCA-1467-6-81 & 1469-6-81 (Nov. 9, 1981) 88 I.D. 1016

Changed Conditions (Differing Site Conditions)

Under a contract for the construction of two concrete lined tunnels for the Navajo Indian Irrigation Project (Tunnel Nos. 3 and 3A) the Board finds a first category differing site conditions claim to have been established with respect to constructing Tunnel No. 3 where the conditions encountered by the contractor in

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions (Differing Site Conditions)
--Continued

that tunnel were shown to be materially different from those indicated in the contract.

In a case involving the assertion of first and second category differing site conditions claims under a contract for the construction of two concrete lined tunnels (Tunnel Nos. 3 and 3A), a first category differing site conditions claim was not established with respect to Tunnel No. 3A where the Board found the contract to have indicated that the deterioration and disintegration to be anticipated in constructing the two tunnels would be primarily surficial in nature but the evidence offered failed to show that the rock failures and fallout encountered in Tunnel No. 3A were due to overstressing and therefore nonsurficial in nature.

A second category differing site conditions claim, asserted under a contract for the construction of two concrete lined tunnels for the Navajo Indian Irrigation Project (Tunnel Nos. 3 and 3A), is denied where the basis for the claim is that the rock failures and fallout encountered in constructing Tunnel No. 3A were due to overstressing (shear type failures) but the evidence of record failed to show that overstressing was the cause of such rock failures and fallout as occurred in that tunnel.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

A claim asserted under a Changed Conditions Clause by reason of alleged withholding of material information (first category) is denied where there is no evidence of record indicating that the Government either withheld material information or otherwise misrepresented the conditions the contractor would encounter in performing a tree thinning contract.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981) 88 I.D. 304

A Government motion for summary judgment is granted and a claim for differing site conditions (based upon damages to the jobsite caused by runoff from a severe rainstorm) is denied where the Board finds that if all of appellant's factual allegations are accepted as true neither the differing site conditions clause nor any other clause in the contract provides a basis for granting the appellant relief for the claim asserted.

Appeal of McCutcheon-Peterson (JV), IBCA-1392-9-80 (Mar. 12, 1981) 88 I.D. 361

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the quantity of roofing estimated by the Government and it is determined that the quantity of roofing required for performance of the contract could not have been verified by a prebid investigation, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment under the Differing Site Conditions clause.

A second category differing site conditions is found to exist where the Government tacitly acknowledged that double roofing encountered under a contract calling for reroofing of a building in Miami, Florida, constituted an unknown condition and the testimony offered in support of the contractor's claim shows that

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions (Differing Site Conditions)
--Continued

while double roofing is not unusual in some areas of the country, it is unusual in the southern areas where there is a lot of mildew and moisture, humidity, as would be true of the particular locale in which the instant contract was performed.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80 (Aug. 12, 1981) 88 I.D. 722

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the approximate quantities estimated by the Government in the invitation for bids and there was no provision included therein requiring or requesting that the quantities specified be verified by prospective bidders, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constituted a first category differing site condition for which the contractor is entitled to an equitable adjustment in the contract price.

Appeal of Elliott's Roofing Co., IBCA-1330-1-80 (Sept. 23, 1981) 88 I.D. 836

Changes and Extras

A claim predicated upon defective specifications is denied where assuming arguendo that the specifications were defective, the appellant failed to show that it incurred any additional costs by reason of the allegedly defective specifications.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981) 88 I.D. 304

A claim for hauling stones for use as riprap greater distances than would have been necessary if the Government had approved other sources for riprap is denied where the Board finds that the Government's refusal to permit the use of designated portions of its lands for sources of riprap was authorized by the contract specifications and the contract provision relied upon by the contractor was found not to provide a basis for recovery where it was neither shown nor alleged that the contractor or its employees had discovered any archaeological evidence which had been reported to the contracting officer or that that officer had directed any delay or change in the work as a result of such discovery having been reported to him.

Appeal of Allen Stuber, d.b.a. Stuber Construction Co., IBCA-1369-6-80 (Mar. 11, 1981)

A claim asserted under the Changes clause for increased costs resulting from actions of the President in decontrolling the price of heavy crude oil is dismissed as being outside the jurisdiction of the Board since the President's action was a sovereign act taken as part of the program to maintain or increase production of heavy crude oil.

Appeal of Martin K. Eby Construction Co., Inc., IBCA-1389-9-80 (Apr. 8, 1981) 88 I.D. 431

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedChanges and Extras--Continued

Where at least four of seven bidders shared the same interpretation of the method of construction required by a contract for the construction of a bridge and none of the bidders were shown to have a different interpretation, the Board finds the contractor's interpretation to be reasonable and further finds that the Government's insistence on a different and more costly method of construction was a constructive change for which the contractor is entitled to an equitable adjustment.

Appeal of S. E. W. Contracting Co., Inc., IBCA-1307-10-79
(May 6, 1981) 88 I.D. 527

A termination for default of a seeding contract is found to be proper where (i) the appellant fails to show that the work ordered by the contracting officer's representative was not required by the technical specifications; (ii) the time allowed for performance of the contract had passed by the time the notice of termination was issued; and (iii) no excusable cause of delay had been shown to exist.

Appeal of Building Maintenance Specialist, Inc.,
IBCA-1397-9-80 (June 15, 1981)

A claim for an equitable adjustment under the Changes Clause is allowed to the extent that the claims submitted are found to have involved the placement of fumigated topsoil in planters in excess of the quantity required based upon a reasonable interpretation of the applicable specifications. As the contractor failed to separately record costs related to the changed work relying rather upon its bid estimate, the amount of the equitable adjustment to which the contractor is entitled is determined by resort to the "jury verdict" approach.

Appeal of Nekoosa Contracting Corp., IBCA-1408-11-80
(June 30, 1981)

Construction Against Drafter

Where a contractor alleged that differing site conditions were encountered in constructing bored tunnels for the Navajo Indian Irrigation Project and resolution of the question as to what the contract indicated turned on the construction to be placed on the specifications and drawings relating to the nature of the support required to support the tunnels, as well as upon a Government estimate that approximately 80 percent of the tunnels would require support other than rockbolts, the Board found the contract to have indicated that the deterioration and disintegration encountered in driving the tunnels would be primarily of a surficial nature. In so finding the Board noted that in the disputed area the contract appears to be susceptible of more than one reasonable interpretation and that within the zones of reasonableness the Government as the author has to share the major responsibility for communicating its intentions as well as the main risk of failure to carry out that responsibility. Heavily weighted by the Board in reaching its decision was the fact that all four of the lowest bidders appeared to have construed the contract to indicate that the tunnels could be supported virtually entirely with rockbolts and that that construction was apparently known to the project construction engineer at the time of bid opening based upon his analysis of the bids received.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981)
88 I.D. 41

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedConstruction Against Drafter--Continued

Where at least four of seven bidders shared the same interpretation of the method of construction required by a contract for the construction of a bridge and none of the bidders were shown to have a different interpretation, the Board finds the contractor's interpretation to be reasonable and further finds that the Government's insistence on a different and more costly method of construction was a constructive change for which the contractor is entitled to an equitable adjustment.

Appeal of S. E. W. Contracting Co., Inc., IBCA-1307-10-79
(May 6, 1981) 88 I.D. 527

Contract Clauses

Where a prime contract requires a specific statement in subcontracts in order for wage escalations to apply and the subcontract contains only the referenced requirements by incorporation by reference of the specifications and a general statement passing on applicable rights and privileges of the prime contractor to the subcontractor, the Board finds no ambiguity in the prime contract and no obligation for the Government to pay for the wage escalations of the subcontractor.

Appeal of Martin K. Eby Construction Co., Inc.,
IBCA-1380-8-80 (Feb. 19, 1981)

A claim for hauling stones for use as riprap greater distances than would have been necessary if the Government had approved other sources for riprap is denied where the Board finds that the Government's refusal to permit the use of designated portions of its lands for sources of riprap was authorized by the contract specifications and the contract provision relied upon by the contractor was found not to provide a basis for recovery where it was neither shown nor alleged that the contractor or its employees had discovered any archaeological evidence which had been reported to the contracting officer or that that officer had directed any delay or change in the work as a result of such discovery having been reported to him.

Appeal of Allen Stuber, d.b.a. Stuber Construction Co., IBCA-1369-6-80 (Mar. 11, 1981)

Where a cost-plus-fixed-fee contract expressly provides for the payment of finally negotiated overhead rates notwithstanding the foregoing provisions which include the limitation of cost provision, the Board finds that a claim for additional overhead costs is not subject to the limitation of the contract estimated costs.

Appeal of Dynadyne, Inc., IBCA-1329-1-80 (Apr. 8, 1981)
88 I.D. 423

When a contractor expressed a desire to avoid legal action and suggested submitting a dispute to arbitration rather than following the dispute resolution process required by the disputes clause, the contracting officer was without authority to delegate his duties under the disputes clause to an arbitrator and the document entitled "Agreement to Submit to Arbitration" was a nullity which conferred no right on the contractor to claim expenses during the arbitration period.

Appeal of Dames & Moore, IBCA-1308-10-79 (Oct. 27, 1981)
88 I.D. 991

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedContracting Officer

A claim asserted under the Changes clause for increased costs resulting from actions of the President in decontrolling the price of heavy crude oil is dismissed as being outside the jurisdiction of the Board since the President's action was a sovereign act taken as part of the program to maintain or increase production of heavy crude oil.

Appeal of Martin K. Eby Construction Co., Inc., IBCA-1389-9-80 (Apr. 8, 1981) 88 I.D. 431

Differing Site Conditions (Changed Conditions)

Where a contractor alleged that differing site conditions were encountered in constructing bored tunnels for the Navajo Indian Irrigation Project and resolution of the question as to what the contract indicated turned on the construction to be placed on the specifications and drawings relating to the nature of the support required to support the tunnels, as well as upon a Government estimate that approximately 80 percent of the tunnels would require support other than rockbolts, the Board found the contract to have indicated that the deterioration and disintegration encountered in driving the tunnels would be primarily of a surficial nature. In so finding the Board noted that in the disputed area the contract appears to be susceptible of more than one reasonable interpretation and that within the zones of reasonableness the Government as the author has to share the major responsibility for communicating its intentions as well as the main risk of failure to carry out that responsibility. Heavily weighted by the Board in reaching its decision was the fact that all four of the lowest bidders appeared to have construed the contract to indicate that the tunnels could be supported virtually entirely with rockbolts and that that construction was apparently known to the project construction engineer at the time of bid opening based upon his analysis of the bids received.

In a case involving the assertion of a differing site conditions claim under a contract for the construction of concrete lined tunnels for the Navajo Indian Irrigation Project, the Board follows the Court of Claims in holding that it is not necessary for the "indications" in the contract to be explicit or specific, it being sufficient for there to be an indication on the face of the contract documents causing a bidder reasonably to expect that there were no "sub-surface or latent" physical conditions at the site differing materially from those indicated in the contract.

Under a contract for the construction of two concrete lined tunnels for the Navajo Indian Irrigation Project (Tunnel Nos. 3 and 3A) the Board finds a first category differing site conditions claim to have been established with respect to constructing Tunnel No. 3 where the conditions encountered by the contractor in that tunnel were shown to be materially different from those indicated in the contract.

In a case involving the assertion of first and second category differing site conditions claims under a contract for the construction of two concrete lined tunnels (Tunnel Nos. 3 and 3A), a first category differing site conditions claim was not established with respect to Tunnel No. 3A where the Board found the contract to have indicated that the deterioration and disintegration to be anticipated in constructing the two tunnels would be primarily surficial in nature but the evidence offered failed to show that the rock failures and fallout encountered in Tunnel No. 3A were due to overstressing and therefore nonsurficial in nature.

A second category differing site conditions claim, asserted under a contract for the construction of two concrete lined tunnels for the Navajo Indian Irrigation

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedDiffering Site Conditions (Changed Conditions)
--Continued

Project (Tunnel Nos. 3 and 3A), is denied where the basis for the claim is that the rock failures and fallout encountered in constructing Tunnel No. 3A were due to overstressing (shear type failures) but the evidence of record failed to show that overstressing was the cause of such rock failures and fallout as occurred in that tunnel.

Where neither what is described as the "reference reach/claim reach" approach nor the total cost method are found acceptable as a proper basis for an equitable adjustment, the Board resorts to the so-called jury verdict method for determining the amount of the equitable adjustment to which the contractor is entitled by reason of the differing site conditions found to have been encountered by the contractor in construction of Tunnel No. 3, a bored and concrete lined tunnel of the Navajo Indian Irrigation Project.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

A claim asserted under a Changed Conditions Clause by reason of alleged withholding of material information (first category) is denied where there is no evidence of record indicating that the Government either withheld material information or otherwise misrepresented the conditions the contractor would encounter in performing a tree thinning contract.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981) 88 I.D. 304

A Government motion for summary judgment is granted and a claim for differing site conditions (based upon damages to the jobsite caused by runoff from a severe rainstorm) is denied where the Board finds that if all of appellant's factual allegations are accepted as true neither the differing site conditions clause nor any other clause in the contract provides a basis for granting the appellant relief for the claim asserted.

Appeal of McCutcheon-Peterson (JV), IBCA-1392-9-80 (Mar. 12, 1981) 88 I.D. 361

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the quantity of roofing estimated by the Government and it is determined that the quantity of reroofing required for performance of the contract could not have been verified by a prebid investigation, the Board finds that the substantially greater amount of reroofing required to complete the contract work than the Government had estimated constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment under the Differing Site Conditions clause.

A second category differing site conditions is found to exist where the Government tacitly acknowledged that double roofing encountered under a contract calling for reroofing of a building in Miami, Florida, constituted an unknown condition and the testimony offered in support of the contractor's claim shows that while double roofing is not unusual in some areas of the country, it is unusual in the southern areas where there is a lot of mildew and moisture, humidity, as

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedDiffering Site Conditions (Changed Conditions)
--Continued

would be true of the particular locale in which the instant contract was performed.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80
(Aug. 12, 1981) 88 I.D. 722

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the approximate quantities estimated by the Government in the invitation for bids and there was no provision included therein requiring or requesting that the quantities specified be verified by prospective bidders, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constituted a first category differing site condition for which the contractor is entitled to an equitable adjustment in the contract price.

Appeal of Elliott's Roofing Co., IBCA-1330-1-80
(Sept. 23, 1981) 88 I.D. 836

Drawings and Specifications

Where a contractor alleged that differing site conditions were encountered in constructing bored tunnels for the Navajo Indian Irrigation Project and resolution of the question as to what the contract indicated turned on the construction to be placed on the specifications and drawings relating to the nature of the support required to support the tunnels, as well as upon a Government estimate that approximately 80 percent of the tunnels would require support other than rockbolts, the Board found the contract to have indicated that the deterioration and disintegration encountered in driving the tunnels would be primarily of a surficial nature. In so finding the Board noted that in the disputed area the contract appears to be susceptible of more than one reasonable interpretation and that within the zones of reasonableness the Government as the author has to share the major responsibility for communicating its intentions as well as the main risk of failure to carry out that responsibility. Heavily weighted by the Board in reaching its decision was the fact that all four of the lowest bidders appeared to have construed the contract to indicate that the tunnels could be supported virtually entirely with rockbolts and that that construction was apparently known to the project construction engineer at the time of bid opening based upon his analysis of the bids received.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

A claim predicated upon defective specifications is denied where assuming arguendo that the specifications were defective, the appellant failed to show that it incurred any additional costs by reason of the allegedly defective specifications.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79
(Feb. 19, 1981) 88 I.D. 304

Where the Board found that the Government withheld information from the contractor pertaining to test results showing the plasticity index of an alternate borrow pit, it was held that the contractor was entitled

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedDrawings and Specifications--Continued

to an equitable adjustment for resulting additional costs on the basis of defective specifications.

Appeal of Seldo Co., Inc., d.b.a. Desert Materials Co., IBCA-1194-5-78 (Sept. 30, 1981) 88 I.D. 895

Duty to Inquire

A claim for an equitable adjustment under the Changes Clause is allowed to the extent that the claims submitted are found to have involved the placement of fumigated topsoil in planters in excess of the quantity required based upon a reasonable interpretation of the applicable specifications. As the contractor failed to separately record costs related to the changed work relying rather upon its bid estimate, the amount of the equitable adjustment to which the contractor is entitled is determined by resort to the "jury verdict" approach.

Appeal of Nekeosa Contracting Corp., IBCA-1408-11-80
(June 30, 1981)

Estimated Quantities

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the quantity of roofing estimated by the Government and it is determined that the quantity of roofing required for performance of the contract could not have been verified by a prebid investigation, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment under the Differing Site Conditions clause.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80
(Aug. 12, 1981) 88 I.D. 722

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the approximate quantities estimated by the Government in the invitation for bids and there was no provision included therein requiring or requesting that the quantities specified be verified by prospective bidders, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constituted a first category differing site condition for which the contractor is entitled to an equitable adjustment in the contract price.

Appeal of Elliott's Roofing Co., IBCA-1330-1-80
(Sept. 23, 1981) 88 I.D. 836

General Rules of Construction

Under a cost sharing contract wherein the Government agreed to reimburse approximately one-third of a refiner's cost of demonstrating a process of recycling waste oil into commercial end products and requiring the contractor to document the process in a final report to be made available to the public, the Board finds that the credits and rebates general provision does not entitle the Government to a share of the profits from the sale of the end products because the schedule provisions for payments to the contractor take precedence over the general provisions, and the allowance of the credit claimed by the Government

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedGeneral Rules of Construction--Continued

terms to require appellant's contract performance at little or no cost to the Government.

Appeal of Shale Development Corp., IBCA-1256-3-79
(May 18, 1981)

A claim for an equitable adjustment under the Changes Clause is allowed to the extent that the claims submitted are found to have involved the placement of fumigated topsoil in planters in excess of the quantity required based upon a reasonable interpretation of the applicable specifications. As the contractor failed to separately record costs related to the changed work relying rather upon its bid estimate, the amount of the equitable adjustment to which the contractor is entitled is determined by resort to the "jury verdict" approach.

Appeal of Nekoosa Contracting Corp., IBCA-1408-11-80
(June 30, 1981)

The Board rejected the argument of the contractor that the language of the Work Stoppage Clause, providing that the contractor will not be entitled to additional compensation for stop work orders of reasonable duration, should be interpreted to allow a claim to be compensable where the total duration of a series of stop work orders was over 50 percent of the total performance time of the contract. The Board found that no single stop work order in a series of five issued was of unreasonable duration and held that the subject language was intended to apply to only one stop work order at a time, and since the parties stipulated that each stop work order was reasonably and properly issued, the claim was not compensable.

Appeal of Seldo Co., Inc., d.b.a. Desert Materials Co., IBCA-1194-5-78 (Sept. 30, 1981) 88 I.D. 895

Where an appellant acknowledges that it received a purchase order calling for moving Government-owned furniture and furnishings shortly prior to the move and the record shows that without making a protest of any kind the contractor proceeded with the move and that it subsequently billed the Government for the services rendered in accordance with the rate stated in the purchase order, the Board finds the purchase order to constitute the agreement of the parties.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81
(Oct. 21, 1981) 88 I.D. 979

Intent of Parties

The Board found that liquidated damages were improperly imposed where the contractor completed installation of a computer 13 days after its delivery under a contract calling for delivery of the computer within 30 days of award but imposing no damages for late delivery and instead providing for liquidated damages if installation of the computer was not completed within 30 days of its delivery. The Board held that if the Government intended to require installation within 60 days of award, it was an unexpressed, subjective, unilateral intent which was insufficient to bind the contractor who reasonably believed otherwise.

Appeal of OAO Corp., IBCA-1427-1-81 (Sept. 15, 1981)

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedModification of ContractsGenerally

In a case involving the movement of Government office furniture and furnishings within the State of Colorado, the Board finds (i) that the National Park Service is not required to pay a higher rate for the movement of its property than the rate negotiated with the contractor as reflected in an accepted purchase order and (ii) that it is not required to forego presenting to the contracting officer for decision a claim for damages sustained to Government property during the course of the move, even though at the time the move took place the tariff rates promulgated by the Colorado Public Utilities Commission required payment of a higher rate than that specified in the purchase order and even though the same tariff rates required payment of the full amount billed for services rendered before claims against the carrier for damages to property during the move could be entertained.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81
(Oct. 21, 1981) 88 I.D. 979

Duress

Where a termination settlement agreement was reached about 14 months after a decision of the Board in favor of appellant and the facts show that appellant was responsible for almost a year of the delay for refusal to allow Government auditors full access to the contract records, and the agreement was signed by appellant's president in an amount in excess of the amount authorized by appellant's board of directors, the Board finds that appellant failed to show that it entered the agreement because of duress on behalf of the Government.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Feb. 19, 1981) 88 I.D. 293

Notices

Where the Board found that the contracting officer had actual notice of the claim for delay based on a diesel fuel shortage, but declined to make the investigation required by Clause 5(d)(2) of the General Provisions of the Standard Form 23A construction contract because of the erroneous belief that a fuel shortage was not a sufficient legal ground to justify an extension, the Board further found that the Government was not prejudiced by alleged untimely notice of delay and refused to foreclose the contractor from asserting the defense of excusable cause for delay.

Appeals of Phillips Construction Co., IBCA-1295-8-79 & 1296-8-79 (July 31, 1981) 88 I.D. 689

Written notice given a week after completion of the contract work is found to satisfy the requirement of the Differing Site Conditions clause for written notice to the contracting officer before the conditions are disturbed where the evidence shows that the Government had actual notice of the operative facts related to double roofing at the time the double roofing was encountered and no showing was made that any prejudice to the Government had resulted from the belated written notice.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80
(Aug. 12, 1981) 88 I.D. 722

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Payments

A claim based primarily upon an overpayment to a contractor is approved where the Board finds the evidence of record substantiates the Government claim and it does not appear that the appellant has ever contested either the fact or the amount of the overpayment or adjustments related to such overpayment which have the effect of reducing the amount of the Government's claim.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79
(Feb. 19, 1981) 88 I.D. 304

Subcontractors and Suppliers

Where a prime contract requires a specific statement in subcontracts in order for wage escalations to apply and the subcontract contains only the referenced requirements by incorporation by reference of the specifications and a general statement passing on applicable rights and privileges of the prime contractor to the subcontractor, the Board finds no ambiguity in the prime contract and no obligation for the Government to pay for the wage escalations of the subcontractor.

Appeal of Martin K. Eby Construction Co., Inc.,
IBCA-1380-8-80 (Feb. 19, 1981)

CONTRACT DISPUTES ACT OF 1978

Interest

A construction contractor's claim for interest under the Contract Disputes Act of 1978, is denied where the Board finds that the underlying claims for an equitable adjustment were negotiated to settlement as evidenced by a written agreement between the parties which contained no provision postponing the finality of the settlement pending the resolution of the claim for interest.

Appeal of Mann Construction Co., Inc., IBCA-1280-7-79
(Dec. 10, 1981) 88 I.D. 1065

Jurisdiction

A claim of mutual mistake asserted under a tree thinning contract is dismissed for want of jurisdiction where the Board finds (i) that it has no authority under the Disputes clause to reform contracts and (ii) that since appellant did not elect to proceed under the Contract Disputes Act of 1978, the Board derives no reformation authority from the Act in this instance.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79
(Feb. 19, 1981) 88 I.D. 304

A protest of award by an unsuccessful bidder is dismissed where the Board finds that it has no jurisdiction over bid protests under either the disputes clause or the Contract Disputes Act of 1978.

Appeal of Dakota Titles & Records, A Joint Venture.
IBCA-1420-1-81 (Feb. 24, 1981) 88 I.D. 324

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

A Government motion to dismiss an appeal is granted where no express contract between the parties exists, there is no evidence from which an implied in fact contract could be inferred, and the Board is without jurisdiction over contracts implied in law, assuming appellant is seeking full relief.

Appeal of Dean Prosser and Crew, IBCA-1471-6-81
(Aug. 28, 1981) 88 I.D. 809

Where a contractor offered not a scintilla of evidence to support its allegations that it encountered bad weather and had to work at reduced efficiency for 21 days and therefore should not have been assessed 21 days of liquidated damages, the Board denied the appeal for lack of evidence to support the contractor's claim. The Government's counterclaim for an amount equal to the unsupported claim was dismissed by the Board since it had not been presented to the contracting officer for decision as required by the Contract Disputes Act of 1978.

Appeal of Asphalt, Inc., IBCA-1331-2-80 (Sept. 15, 1981)

DISPUTES AND REMEDIES

Burden of Proof

In a case involving the assertion of a differing site conditions claim under a contract for the construction of concrete lined tunnels for the Navajo Indian Irrigation Project, the Board follows the Court of Claims in holding that it is not necessary for the "indications" in the contract to be explicit or specific, it being sufficient for there to be an indication on the face of the contract documents causing a bidder reasonably to expect that there were no "subsurface or latent" physical conditions at the site differing materially from those indicated in the contract.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

Where the appellant seeks to have an assessment of 46 days of liquidated damages remitted, but offers no proof in support of his claims, the Board denies the appeal for want of proof because mere assertions in the complaint are not proof.

Appeal of Johnsonius & Sons, Inc., IBCA-1345-4-80
(Feb. 25, 1981)

An appeal seeking remission of liquidated damages is denied when the contract completion occurred beyond the specified completion date and appellant offers no proof that the delay was excusable.

Appeal of Mechaneer, Inc., IBCA-1362-6-80 (Apr. 8, 1981)

Where the testimony of appellant's only witness testifying with respect to contract performance was found unworthy of belief and not credible, the Board holds that it has the discretion to reject all the testimony of such witness except that which has been corroborated; and the Board concludes, that except for one of the claims for an equitable adjustment conceded by the Government, there was no corroboration of the discredited testimony, and, therefore, the remaining

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedBurden of Proof--Continued

claims of appellant must be denied for failure to sustain the burden of proof.

Appeal of Scona, Inc., IBCA-1094-1-76 (June 16, 1981)
88 I.D. 590

Where the Board finds appellant's evidence with respect to two alleged conversations to be little more than conclusory hearsay without reference to literal substance and appellant alleged that certain drawings had been approved by the Government, when the clear language of the responses to the submitted drawings indicated rejection, the Board holds that appellant has failed to sustain its burden of proof, because of failure to prove the allegations of its complaint by any substantial evidence, and denies the claim of appellant for costs incurred to furnish and install insulating fittings required by the specifications in connection with the construction of a pipeline.

Appeal of Kordick and Son, Inc., and Steve P. Rados, Inc. (A Joint Venture), IBCA-1255-3-79 (Aug. 27, 1981)
88 I.D. 798

Where a contractor offered not a scintilla of evidence to support its allegations that it encountered bad weather and had to work at reduced efficiency for 21 days and therefore should not have been assessed 21 days of liquidated damages, the Board denied the appeal for lack of evidence to support the contractor's claim. The Government's counterclaim for an amount equal to the unsupported claim was dismissed by the Board since it had not been presented to the contracting officer for decision as required by the Contract Disputes Act of 1978.

Appeal of Asphalt, Inc., IBCA-1331-2-80 (Sept. 15, 1981)

DamagesGenerally

In a contract which provided for helicopter spraying of herbicide on grass after spring sprouting and the Government, after giving notice to proceed and granting permission to the contractor to mix the herbicide for the entire project, changed its mind about the readiness of the grass for spraying and imposed a non-contractual requirement that the grass be 4 inches high before spraying, the Board found that the Government breached its duty not to interfere with the contractor's performance and that the contractor was entitled to damages in the form of standby costs for its helicopter and for the tank truck in which the herbicide was mixed.

Appeal of Evergreen Helicopters, Inc., IBCA-1388-8-80 (Aug. 28, 1981)
88 I.D. 803

Actual Damages

Where in connection with the movement of Government property, a contractor employs workers not provided for by terms of the purchase order covering the move and it appears that the need for such extra workers resulted in part from deficiencies in performance by the contractor and in part from failures of cooperation by the Government, the Board--noting the absence of any precise measurement for determining the

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedDamages--ContinuedActual Damages--Continued

relative fault of the parties--resorts to a jury verdict approach in finding the amount to which the contractor is entitled for one of the items included in the claim for equitable adjustment.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981)
88 I.D. 979

Measurement

Where in connection with the movement of Government property, a contractor employs workers not provided for by terms of the purchase order covering the move and it appears that the need for such extra workers resulted in part from deficiencies in performance by the contractor and in part from failures of cooperation by the Government, the Board--noting the absence of any precise measurement for determining the relative fault of the parties--resorts to a jury verdict approach in finding the amount to which the contractor is entitled for one of the items included in the claim for equitable adjustment.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981)
88 I.D. 979

Equitable Adjustments

Where neither what is described as the "reference reach/claim reach" approach nor the total cost method are found acceptable as a proper basis for an equitable adjustment, the Board resorts to the so-called jury verdict method for determining the amount of the equitable adjustment to which the contractor is entitled by reason of the differing site conditions found to have been encountered by the contractor in construction of Tunnel No. 3, a bored and concrete lined tunnel of the Navajo Indian Irrigation Project.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981)
88 I.D. 41

A claim predicated upon defective specifications is denied where assuming arguendo that the specifications were defective, the appellant failed to show that it incurred any additional costs by reason of the allegedly defective specifications.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981)
88 I.D. 304

A claim for an equitable adjustment under the Changes Clause is allowed to the extent that the claims submitted are found to have involved the placement of fumigated topsoil in planters in excess of the quantity required based upon a reasonable interpretation of the applicable specifications. As the contractor failed to separately record costs related to the changed work relying rather upon its bid estimate, the amount of the equitable adjustment to which the contractor is entitled is determined by resort to the "jury verdict" approach.

Appeal of Nekcosa Contracting Corp., IBCA-1408-11-80 (June 30, 1981)

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedEquitable Adjustments--Continued

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the approximate quantities estimated by the Government in the invitation for bids and there was no provision included therein requiring or requesting that the quantities specified be verified by prospective bidders, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constituted a first category differing site condition for which the contractor is entitled to an equitable adjustment in the contract price.

Appeal of Elliott's Roofing Co., IBCA-1330-1-80
(Sept. 23, 1981) 88 I.D. 836

Where the Government admits liability and the quantum evidence adduced by the parties is not satisfactory, the Board will determine the amount of equitable adjustment by utilizing the jury verdict approach.

Appeal of Seldo Co., Inc., d.b.a. Desert Materials Co., IBCA-1194-5-78 (Sept. 30, 1981) 88 I.D. 895

Where in connection with the movement of Government property, a contractor employs workers not provided for by terms of the purchase order covering the move and it appears that the need for such extra workers resulted in part from deficiencies in performance by the contractor and in part from failures of cooperation by the Government, the Board--noting the absence of any precise measurement for determining the relative fault of the parties--resorts to a jury verdict approach in finding the amount to which the contractor is entitled for one of the items included in the claim for equitable adjustment.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81
(Oct. 21, 1981) 88 I.D. 979

A construction contractor's claim for interest under the Contract Disputes Act of 1978, is denied where the Board finds that the underlying claims for an equitable adjustment were negotiated to settlement as evidenced by a written agreement between the parties which contained no provision postponing the finality of the settlement pending the resolution of the claim for interest.

Appeal of Mann Construction Co., Inc., IBCA-1280-7-79
(Dec. 10, 1981) 88 I.D. 1065

Jurisdiction

A claim of mutual mistake asserted under a tree thinning contract is dismissed for want of jurisdiction where the Board finds (i) that it has no authority under the Disputes clause to reform contracts and (ii) that since appellant did not elect to proceed under the Contract Disputes Act of 1978, the Board derives no reformation authority from the Act in this instance.

A claim based primarily upon an overpayment to a contractor is approved where the Board finds the evidence of record substantiates the Government claim and it does not appear that the appellant has ever contested either the fact or the amount of the overpayment or adjustments related to such overpayment which have

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedJurisdiction--Continued

the effect of reducing the amount of the Government's claim.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79
(Feb. 19, 1981) 88 I.D. 304

A protest of award by an unsuccessful bidder is dismissed where the Board finds that it has no jurisdiction over bid protests under either the disputes clause or the Contract Disputes Act of 1978.

Appeal of Dakota Titles & Records, A Joint Venture, IBCA-1420-1-81 (Feb. 24, 1981) 88 I.D. 324

The Board held that since its jurisdiction is appellate only, it may not consider claims presented to it without such claims first having been submitted to the contracting officer for consideration and decision.

Appeals of Phillips Construction Co., IBCA-1295-8-79 & 1296-8-79 (July 31, 1981) 88 I.D. 689

An appeal may be decided on the basis of a theory not advanced by the parties so long as the theory is consistent with the facts of record or legitimate inferences therefrom.

Written notice given a week after completion of the contract work is found to satisfy the requirement of the Differing Site Conditions clause for written notice to the contracting officer before the conditions are disturbed where the evidence shows that the Government had actual notice of the operative facts related to double roofing at the time the double roofing was encountered and no showing was made that any prejudice to the Government had resulted from the belated written notice.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80
(Aug. 12, 1981) 88 I.D. 722

Substantial Evidence

In a case involving the assertion of a differing site conditions claim under a contract for the construction of concrete lined tunnels for the Navajo Indian Irrigation Project, the Board follows the Court of Claims in holding that it is not necessary for the "indications" in the contract to be explicit or specific, it being sufficient for there to be an indication on the face of the contract documents causing a bidder reasonably to expect that there were no "sub-surface or latent" physical conditions at the site differing materially from those indicated in the contract.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

Where the Board finds appellant's evidence with respect to two alleged conversations to be little more than conclusory hearsay without reference to literal substance and appellant alleged that certain drawings had been approved by the Government, when the clear language of the responses to the submitted drawings indicated rejection, the Board holds that appellant has failed to sustain its burden of proof, because of failure to prove the allegations of its complaint by any substantial evidence, and denies the claim of appellant for costs incurred to furnish and install

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedSubstantial Evidence--Continued

insulating fittings required by the specifications in connection with the construction of a pipeline.

Appeal of Kordick and Son, Inc., and Steve P. Rados, Inc. (A Joint Venture), IBCA-1255-3-79 (Aug. 27, 1981) 88 I.D. 798

Termination for DefaultGenerally

Where the contractor delivered contract items which failed to substantially conform with the contract specifications, and where the contracting officer terminated the contractor's right to proceed with performance of the contract work because of the contractor's nonconforming delivery, the Government's termination for default was proper.

Appeal of Franklin Instrument Co., Inc., IBCA-1270-6-79 (Feb. 26, 1981) 88 I.D. 326

Where the record shows that the contractor waited until 4 days before the contract time for construction had elapsed and then wrote to the contracting officer to advise that he was ready to start construction, and where the contractor offered no evidence to support allegations regarding equipment breakdown and high tides, the Board found that the failure to make progress was unexcused and that default termination was warranted.

Appeal of Central American Construction Co., Inc., IBCA-1337-3-80 (Apr. 14, 1981)

A termination for default of a seeding contract is found to be proper where (i) the appellant fails to show that the work ordered by the contracting officer's representative was not required by the technical specifications; (ii) the time allowed for performance of the contract had passed by the time the notice of termination was issued; and (iii) no excusable cause of delay had been shown to exist.

Appeal of Building Maintenance Specialist, Inc., IBCA-1397-9-80 (June 15, 1981)

Where the contractor established that a critical diesel fuel shortage prevented timely completion of the contract, and that such shortage was unforeseeable, beyond the control, and without the fault or negligence of the contractor or its subcontractors or suppliers, the Board held that the contractor proved excusable cause for delay.

Appeals of Phillips Construction Co., IBCA-1295-8-79 & 1296-8-79 (July 31, 1981) 88 I.D. 689

FORMATION AND VALIDITYAuthority to Make

When a contractor expressed a desire to avoid legal action and suggested submitting a dispute to arbitration rather than following the dispute resolution process required by the disputes clause, the contracting officer was without authority to delegate his duties under the disputes clause to an arbitrator and the document entitled "Agreement to Submit to Arbitration" was a nullity which conferred no right on the

CONTRACTS--ContinuedFORMATION AND VALIDITY--ContinuedAuthority to Make--Continued

contractor to claim expenses during the arbitration period.

Appeal of Dames & Moore, IBCA-1308-10-79 (Oct. 27, 1981) 88 I.D. 991

Fixed-price Contracts

Where an appellant acknowledges that it received a purchase order calling for moving Government-owned furniture and furnishings shortly prior to the move and the record shows that without making a protest of any kind the contractor proceeded with the move and that it subsequently billed the Government for the services rendered in accordance with the rate stated in the purchase order, the Board finds the purchase order to constitute the agreement of the parties.

In a case involving the movement of Government office furniture and furnishings within the State of Colorado, the Board finds (i) that the National Park Service is not required to pay a higher rate for the movement of its property than the rate negotiated with the contractor as reflected in an accepted purchase order and (ii) that it is not required to forego presenting to the contracting officer for decision a claim for damages sustained to Government property during the course of the move, even though at the time the move took place the tariff rates promulgated by the Colorado Public Utilities Commission required payment of a higher rate than that specified in the purchase order and even though the same tariff rates required payment of the full amount billed for services rendered before claims against the carrier for damages to property during the move could be entertained.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981) 88 I.D. 979

Formalities

In a case involving the movement of Government office furniture and furnishings within the State of Colorado, the Board finds (i) that the National Park Service is not required to pay a higher rate for the movement of its property than the rate negotiated with the contractor as reflected in an accepted purchase order and (ii) that it is not required to forego presenting to the contracting officer for decision a claim for damages sustained to Government property during the course of the move, even though at the time the move took place the tariff rates promulgated by the Colorado Public Utilities Commission required payment of a higher rate than that specified in the purchase order and even though the same tariff rates required payment of the full amount billed for services rendered before claims against the carrier for damages to property during the move could be entertained.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981) 88 I.D. 979

Governing Law

In a case involving the movement of Government office furniture and furnishings within the State of Colorado, the Board finds (i) that the National Park Service is not required to pay a higher rate for the movement of its property than the rate negotiated with the contractor as reflected in an accepted purchase order and (ii) that it is not required to forego presenting to the contracting officer for decision a claim for damages sustained to Government property during the course of the move, even though at the time the move took place the tariff rates promulgated by the Colorado

CONTRACTS--ContinuedFORMATION AND VALIDITY--ContinuedGoverning Law--Continued

Public Utilities Commission required payment of a higher rate than that specified in the purchase order and even though the same tariff rates required payment of the full amount billed for services rendered before claims against the carrier for damages to property during the move could be entertained.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81
(Oct. 21, 1981) 88 I.D. 979

Implied and Constructive Contracts

A Government motion to dismiss an appeal is granted where no express contract between the parties exists, there is no evidence from which an implied in fact contract could be inferred, and the Board is without jurisdiction over contracts implied in law, assuming appellant is seeking full relief.

Appeal of Dean Prosser and Crew, IBCA-1471-6-81
(Aug. 28, 1981) 88 I.D. 809

PERFORMANCE OR DEFAULTAcceptance of Performance

Under a fixed price contract requiring the specialized archeological services of a contractor to conduct research and prepare a final report, the Board finds the final report and material delivered were improperly rejected by applying acceptance criteria developed unilaterally by the Government subsequent to award of the contract and that such criteria were developed for purposes other than the instant contract requirements.

Appeal of A. Helene Warren, IBCA-1422-1-81 (Sept. 29, 1981)

Breach

In a contract which provided for helicopter spraying of herbicide on grass after spring sprouting and the Government, after giving notice to proceed and granting permission to the contractor to mix the herbicide for the entire project, changed its mind about the readiness of the grass for spraying and imposed a non-contractual requirement that the grass be 4 inches high before spraying, the Board found that the Government breached its duty not to interfere with the contractor's performance and that the contractor was entitled to damages in the form of standby costs for its helicopter and for the tank truck in which the herbicide was mixed.

Appeal of Evergreen Helicopters, Inc., IBCA-1388-8-80
(Aug. 28, 1981) 88 I.D. 803

Excusable Delays

Where a prime contractor's delayed performance of its contractual obligations was caused by its sole source subcontractor's failure to perform, the prime contractor assumed the risk of such nonperformance by its subcontractor, and the prime contractor's delayed performance was not an excusable cause of delay cognizable under the default clause.

Appeal of Franklin Instrument Co., Inc., IBCA-1270-6-79
(Feb. 26, 1981) 88 I.D. 326

CONTRACTS--ContinuedPERFORMANCE OR DEFAULT--ContinuedExcusable Delays--Continued

A termination for default of a seeding contract is found to be proper where (i) the appellant fails to show that the work ordered by the contracting officer's representative was not required by the technical specifications; (ii) the time allowed for performance of the contract had passed by the time the notice of termination was issued; and (iii) no excusable cause of delay had been shown to exist.

Appeal of Building Maintenance Specialist, Inc., IBCA-1397-9-80 (June 15, 1981)

Where the contractor established that a critical diesel fuel shortage prevented timely completion of the contract, and that such shortage was unforeseeable, beyond the control, and without the fault or negligence of the contractor or its subcontractors or suppliers, the Board held that the contractor proved excusable cause for delay.

Appeals of Phillips Construction Co., IBCA-1295-8-79 & 1296-8-79 (July 31, 1981) 88 I.D. 689

Waiver and Estoppel

Where the Government's conduct constituted encouragement to a contractor to proceed with performance of the contract work after the delivery date had passed, and where such a contractor incurred performance costs in reliance thereon, the Government has waived the delivery schedule.

Appeal of Franklin Instrument Co., Inc., IBCA-1270-6-79
(Feb. 26, 1981) 88 I.D. 326

CONVEYANCESGENERALLY

Under sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. ELM's rejection of an application to amend a homestead patent to change the legal description of the land patented will be affirmed where the record does not support a finding that the entryman erred in describing the lands he had entered.

Ben R. Williams, 57 IBLA 8 (Aug. 5, 1981)

Adverse possession cannot be asserted against the United States. Mere occupancy of public lands and the making of improvements thereon give no vested right against the United States. An occupant of Federal land must show that he occupies the same under some proceeding or law that at least authorized his right of possession.

Lillian Barlow, 58 IELA 385 (Oct. 21, 1981)

DELEGATION OF AUTHORITY

(See also Administrative Authority, Contracts--if included in this Index.)

EXTENT OF

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

DESERT LAND ENTRYAPPLICATIONS

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of the withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert A. Adams, 57 IBLA 370 (Sept. 8, 1981)

A desert land entry application filed pursuant to the Act of Mar. 3, 1877, as amended, 43 U.S.C. § 321 (1976), is properly rejected where the applicant fails to provide evidence that the proposed system of impounding rainfall on the land in question and directing it to the plants by a system of canals and ditches would provide a permanent and feasible source of sufficient water for irrigation.

A desert land entry application which provides that the crops for cultivation will be the century plant and the pinon pine tree is properly rejected because such species are not "crops" which would qualify the subject land for desert land entry.

Patricia K. Scher, 59 IBLA 276 (Oct. 29, 1981)

CULTIVATION AND RECLAMATION

Where after weighing all the evidence presented at a hearing in a Government contest of two desert land entries, the Administrative Law Judge determines that only 480 acres of land can be reasonably successfully cultivated from the common water supply developed during the life of the entries, that determination will be upheld when it is supported by the record.

United States v. Elodymae Zwang, Darrell Zwang, 55 IBLA 83 (June 1, 1981)

A desert land entry application which provides that the crops for cultivation will be the century plant and the pinon pine tree is properly rejected because such species are not "crops" which would qualify the subject land for desert land entry.

Patricia K. Scher, 59 IBLA 276 (Oct. 29, 1981)

LANDS SUBJECT TO

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It

DESERT LAND ENTRY--ContinuedLANDS SUBJECT TO--Continued

cannot be suspended pending the lifting of the withdrawal. Even where the purpose of the withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert A. Adams, 57 IBLA 370 (Sept. 8, 1981)

WATER RIGHT

A desert land entry application filed pursuant to the Act of Mar. 3, 1877, as amended, 43 U.S.C. § 321 (1976), is properly rejected where the applicant fails to provide evidence that the proposed system of impounding rainfall on the land in question and directing it to the plants by a system of canals and ditches would provide a permanent and feasible source of sufficient water for irrigation.

Patricia K. Scher, 59 IBLA 276 (Oct. 29, 1981)

WATER SUPPLY

Where after weighing all the evidence presented at a hearing in a Government contest of two desert land entries, the Administrative Law Judge determines that only 480 acres of land can be reasonably successfully cultivated from the common water supply developed during the life of the entries, that determination will be upheld when it is supported by the record.

United States v. Elodymae Zwang, Darrell Zwang, 55 IBLA 83 (June 1, 1981)

EMINENT DOMAIN

(See also Irrigation Claims--if included in this Index.)

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

ENDANGERED SPECIES ACT OF 1973SECTION 7Consultation

The July 19, 1978, Solicitor's Opinion 85 I.D. 275 (1978) relating to analysis of cumulative effects during consultation pursuant to sec. 7 of the Endangered Species Act, and the July 24, 1978, memorandum, which was a supplement to that opinion, are withdrawn. Any further legal advice on the matter will be provided by the Associate Solicitor for Conservation and Wildlife.

Cumulative Impacts Under Section 7 of the Endangered Species Act, M-36905 (Supp.) (Aug. 26, 1981)

88 I.D. 903

ENDANGERED SPECIES ACT OF 1973--Continued

SECTION 7--Continued

Consultation--Continued

Earlier Solicitor's Opinions on cumulative impact analysis have been withdrawn. Solicitor's Opinion M-36905 (Supp.), 88 I.D. 903 (1981). Sec. 7 consultation under the Endangered Species Act must consider past and present impacts of all projects and human activities, whether private, state or federal. Consultation must also consider the cumulative impacts of other proposed future federal projects in the vicinity which have undergone sec. 7 consultation and received favorable biological opinions. Finally, consideration should also be given to the impacts of proposed state or private actions whose completion prior to the completion of the federal project subject to consultation is reasonably certain.

Cumulative Impacts Under Section 7 of the Endangered Species Act, M-36938 (Aug. 27, 1981) 88 I.D. 903

Critical Habitat

Designation of an area as a critical habitat pursuant to sec. 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C.A. § 1536 (West Supp. 1980), does not necessarily foreclose oil and gas leasing in that area.

The Secretary of the Interior may, in his discretion, reject any offer to lease Federal lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land has been designated a critical habitat pursuant to sec. 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C.A. § 1536 (West Supp. 1980), and where BLM determines that oil and gas development would result in an unavoidable adverse impact, rejection of a lease offer will be affirmed in the absence of countervailing compelling reasons.

Esdras K. Hartley, Impel Energy Corp., 57 IBLA 319 (Sept. 1, 1981)

ENVIRONMENTAL POLICY ACT

(See also National Environmental Policy Act of 1969--if included in this Index.)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Sierra Club et al., 57 IBLA 79 (Aug. 21, 1981)

An appeal seeking review of an informational BLM handout containing a proposal for various land uses because the proposal was made without the filing of an Environmental Impact Statement will be dismissed where the document in question implements no policy or action, does not adversely affect appellant, and where it appears that an EIS is being, or will be prepared in connection with any BLM recommendations or reports based on land use proposals for the Coos Bay District,

ENVIRONMENTAL POLICY ACT--Continued

as required by the National Environmental Policy Act of 1969.

Cascade Holistic Economic Consultants and Oregon Wilderness Coalition, 58 IBLA 332 (Oct. 16, 1981)

ENVIRONMENTAL QUALITY

(See also Water Pollution Control--if included in this Index.)

GENERALLY

The Bureau of Land Management may require execution of a no surface occupancy stipulation prior to issuance of a noncompetitive oil and gas lease only where there is evidence that less stringent alternatives would not adequately accomplish the intended purpose of avoiding erosion and protecting the recreational and scenic value of an area.

Helvin A. Brown, 53 IBLA 45 (Feb. 27, 1981)

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James E. Sullivan, 54 IBLA 1 (Apr. 1, 1981)

Although the Bureau of Land Management may require such special stipulations as are necessary for protection of the lands embraced in any oil and gas lease, such special stipulations must be supported by valid reasons weighed by the Department with due regard for the public interest. A decision to impose a no surface occupancy stipulation will be set aside and the case remanded where there is no data in the record to support the decision and no indication that less stringent stipulations were considered.

Max B. Lewis, 56 IBLA 293 (July 28, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

ENVIRONMENTAL STATEMENTS

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Sierra Club et al., 57 IBLA 79 (Aug. 21, 1981)

EQUITABLE ADJUDICATION

GENERALLY

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace K. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Floyd O. Lochner, 56 IBLA 271 (July 28, 1981)

The Department is not estopped from rejecting an oil and gas lease offer, or canceling a lease issued pursuant thereto, because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Equitable adjudication of an application to purchase a trade manufacturing site claim filed at least 12 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Stuart Grant Ramstad, 55 IBLA 223 (June 18, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the secretarial level. Such reversal upon Departmental review does not constitute retrospective application of a new rule.

Richard E. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level, and where there was no affirmative misconduct by BLM employees.

Alex Sachse, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Sepanko, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

SUBSTANTIAL COMPLIANCE

Equitable adjudication of an application to purchase a trade manufacturing site claim filed at least 12 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Stuart Grant Ramstad, 55 IBLA 223 (June 18, 1981)

Equitable adjudication may be invoked to permit consideration of a homesite purchase application that was not filed within the time required, where substantial compliance with the law has been made and valid existing rights were established before the land was withdrawn by Public Land Order 5418.

Larry L. Lowenstein, 57 IBLA 95 (Aug. 25, 1981)

ESTOPPEL

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

The elements of an estoppel are the following: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Estoppel of the Government is an extraordinary remedy, especially as it relates to public lands, and is to be applied with the greatest care and circumspection.

Coronado Oil Co., 52 IBLA 308 (Feb. 10, 1981)

ESTOPPEL--Continued

A copy of a document is not considered to be among the number filed if it is only received and date-stamped and returned to an applicant as evidence of receipt. Such acknowledgement of receipt by Bureau of Land Management personnel does not constitute a determination that the filing was complete or that all the documents recited in the cover letter were included. BLM is not required to retain that copy of the document, contrary to an applicant's instructions, in order to make the filing complete.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the the Government from regarding the lease as having terminated.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

John Plutt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Lyman Mining Co., 54 IBLA 165 (Apr. 21, 1981)

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

Recordation of an unpatented mining claim does not render valid any claim which would not otherwise be valid under applicable law. Acceptance by BLM of recordation documents does not constitute a recognition of the validity of the claim and BLM is not estopped to declare the claim null and void where it was located on land withdrawn from mining location at the time of the location.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that

ESTOPPEL--Continued

their decisions are subject to reversal on review at the Secretarial level.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981)
88 I.D. 479

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace K. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Floyd O. Lochner, 56 IBLA 271 (July 28, 1981)

The Department is not estopped from rejecting an oil and gas lease offer, or canceling a lease issued pursuant thereto, because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely the required evidence of assessment work or notice of intention to hold.

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the secretarial level. Such reversal upon Departmental review does not constitute retrospective application of a new rule.

Richard E. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level, and where there was no affirmative misconduct by BLM employees.

Alex Sachen, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Semanko, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

ESTOPPEL--Continued

Where the Bureau of Land Management file pertaining to a particular mining claim group contains information showing the claims to be null and void, the assignee who has failed to check the file runs the risks which flow from failure to so check that public record.

Gary Willis, 56 IBLA 217 (July 22, 1981)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Simon A. Rife, 56 IBLA 378 (Aug. 3, 1981)

James N. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)

Reliance on a Bureau of Land Management pamphlet containing erroneous information does not relieve a claimant of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Failure to disavow a state memorandum implying OSM approval of its contents or failure to object to the issuance of a state permit containing terms inconsistent with Federal regulations does not constitute action that estops OSM from taking an enforcement action.

Mountain Enterprises Coal Co., 3 IBSMA 338 (Sept. 25, 1981) 88 I.D. 861

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost through lack of enforcement by some of its officers.

Clyde K. Kobbeman, 58 IBLA 268 (Oct. 8, 1981) 88 I.D. 915

Janet A. Rodgers, 58 IBLA 275 (Oct. 8, 1981)

Evidence of annual assessment work must be delivered to and received by the proper BLM office in order to be filed. Depositing a document in the mails does not constitute filing. Reliance on erroneous information provided by BLM employees which is contrary to regulation does not relieve a mining claimant of this obligation.

Joe L. Watts, 59 IBLA 127 (Oct. 26, 1981)

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owners of mining claims of an obligation imposed on them by statute or relieve them of the consequences imposed by statute for failure to comply with its requirements. Estoppel is an extraordinary remedy, especially as it relates to public lands and is to be applied with the greatest care and circumspection.

Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (Nov. 27, 1981)

EVIDENCEGENERALLY

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Oct. 1, 1980, bearing a postmark date of Sept. 30, 1980, does not reflect reasonable diligence.

Elizabeth A. Christensen, 52 IBLA 113 (Jan. 13, 1981)

Settlement agreements compromising prior trespasses may be considered an admission of liability only where, by the terms of a settlement, liability is admitted. Where, however, liability has been initially determined in a Departmental adjudication, such a determination is properly considered in a subsequent hearing. As probative of the issue of "repeated" violations, absent a stipulated settlement which expressly vacates the factual determinations made in the prior adjudication.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Lynd Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Robert E. Fennell, Clair B. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible. The trier of fact, having presided at the hearing and observed the witnesses, is in the best position to judge the weight to be accorded testimony.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. J. L. Noss and Mary E. Noss, 54 IBLA 355 (May 12, 1981)

EVIDENCE--Continued

GENERALLY--Continued

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer.

Ken Wiley, 54 IBLA 367 (May 18, 1981)

A preference right lease applicant must be allowed to perform additional drilling tests to prove that it discovered commercial quantities of coal during the term of its prospecting permit even though that permit has expired, where the record reflects that a satisfactory demonstration of such discovery was made under the regulatory standards in effect during the term of the permit and revised regulations imposing more stringent requirements of proof of the discovery are applied to the lease application after expiration of the permit.

Hiko Bell Mining and Oil Co., 55 IBLA 324 (June 26, 1981)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible.

United States v. John McDowell and Miguel Nunez, 56 IBLA 100 (July 15, 1981)

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Jan. 2, 1981, bearing a postmark date of the same day does not reflect reasonable diligence.

Arnold L. Gilberg, 57 IBLA 46 (Aug. 17, 1981)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether offeror is qualified, the offer is properly rejected.

Judith Gail Bell, 57 IBLA 139 (Aug. 25, 1981)

EVIDENCE--Continued

GENERALLY--Continued

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

Andrew H. Nelson, 58 IBLA 220 (Sept. 30, 1981)

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Where the date marked on an envelope by a private postage meter conflicts with the postmark made by a United States post office, the United States postmark will be deemed the date of mailing in the absence of satisfactory corroborating evidence that the mailing occurred earlier.

Max W. Young, 60 IBLA 224 (Nov. 30, 1981)

BURDEN OF PROOF

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that an individual has committed a grazing trespass if that finding is in accordance with, and supported by, reliable, probative and substantial evidence.

Where the evidence as to specific trespass indicates that, of a number of cattle counted, some were located on intermingled private land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands. The burden then shifts to the grazing licensee to rebut this presumption.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

Where the Government contests the validity of a mining claim, it bears only the burden of establishing a prima facie case of lack of discovery; the burden then shifts to the claimant to overcome the Government's showing by a preponderance of the evidence. A prima facie case is established when a Government mineral examiner testifies that he examined the claim and

EVIDENCE--ContinuedBURDEN OF PROOF--Continued

found insufficient evidence of the discovery of a valuable mineral deposit.

United States v. Leon Noyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

CREDIBILITY

Where a mining claimant submits evidence on appeal which supports a conclusion that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to timely file the required documentation will be set aside.

L. E. Garrison, 52 IBLA 131 (Jan. 16, 1981)

Where a preponderance of the evidence supports a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be vacated.

Bernard J. Braker, 54 IBLA 332 (May 5, 1981)

Bruce L. Baker, Robert C. Baker, 55 IBLA 55 (May 29, 1981)

Where the testimony of appellant's only witness testifying with respect to contract performance was found unworthy of belief and not credible, the Board holds that it has the discretion to reject all the testimony of such witness except that which has been corroborated; and the Board concludes, that except for one of the claims for an equitable adjustment conceded by the Government, there was no corroboration of the discredited testimony, and, therefore, the remaining claims of appellant must be denied for failure to sustain the burden of proof.

Appeal of Scona, Inc., IBCA-1094-1-76 (June 16, 1981)
88 I.D. 590

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be affirmed.

Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

CREDIBILITY OF WITNESSES

Where the resolution of a case is influenced by the Administrative Law Judge's findings of credibility, which in turn are based on reaction to the demeanor of the witnesses, and such findings are supported by substantial evidence, the Board will not ordinarily disturb them.

United States v. Gerald H. Braniff, 59 IBLA 337 (Nov. 5, 1981)

EVIDENCE--ContinuedPRESUMPTIONS

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Robert E. Fennell, Clair E. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Fahy Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

John Walter Starks, 55 IBLA 266 (June 25, 1981)

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where an official BLM record does not reflect any payment for advance first-year annual rental for an oil and gas lease but does contain a dated statement by BLM's receiving clerk indicating that no money was received when the lease applicant filed her offer with BLM, it is presumed that no payment was made, in the absence of a clear showing to the contrary by the applicant.

Theresa Jibilian, 57 IBLA 354 (Sept. 8, 1981)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Affidavits and other evidence, including a shipping notice and a delivery receipt, indicating that the information required by 43 CFR 3102.2-7(b), in connection with noncompetitive oil and gas lease offers, was submitted timely to BLM is not sufficient to overcome

EVIDENCE--Continued

PRESUMPTIONS--Continued

the presumption that public officials have properly discharged their duties and have not misplaced or lost the document in issue where the corroborating evidence fails to relate the submission directly to the lease application at issue.

Lawrence E. Dye, 57 IBLA 360 (Sept. 8, 1981)

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where the official time and date stamp of a BLM office is impressed upon a document, it is presumed that the impression is accurate, in the absence of a clear showing to the contrary by appellant.

Whelan's Mining and Exploration, Inc., 58 IBLA 127 (Sept. 24, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

H. S. Rademacher, 58 IBLA 152 (Sept. 25, 1981)
88 I.D. 873

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

Bernard S. Storper, 60 IBLA 67 (Nov. 19, 1981)

The presumption that BLM officials properly discharge their duties in receiving and promptly date stamping official filings tendered them is not overcome by unsupported allegations of mining claimants that BLM lost or misprocessed their evidence of assessment work.

Junewanda J. Papaeliou, Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. Unsupported and uncorroborated allegations do not constitute probative evidence.

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

EVIDENCE--Continued

SUFFICIENCY

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that an individual has committed a grazing trespass if that finding is in accordance with, and supported by, reliable, probative and substantial evidence.

Where the evidence as to specific trespass indicates that, of a number of cattle counted, some were located on intermingled private land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands. The burden then shifts to the grazing licensee to rebut this presumption.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981)
88 I.D. 275

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible. The trier of fact, having presided at the hearing and observed the witnesses, is in the best position to judge the weight to be accorded testimony.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

John Walter Starks, 55 IBLA 266 (June 25, 1981)

EVIDENCE--ContinuedSUFFICIENCY--Continued

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible.

United States v. John McDowell and Miguel Nunez, 56 IBLA 100 (July 15, 1981)

The effect of a notation on a document stating that in a conveyance to the State of Wyoming "all petroleum" was reserved to the United States is overcome by evidence of more authoritative records establishing that petroleum was not reserved, and that such a reservation would have been contrary to the statute which conditioned the conveyance under the prevailing circumstances, so that an oil and gas lease offer for the purported reserved petroleum was properly rejected.

Charles H. Whitlock, 57 IBLA 252 (Aug. 28, 1981)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Affidavits and other evidence, including a shipping notice and a delivery receipt, indicating that the information required by 43 CFR 3102.2-7(b), in connection with noncompetitive oil and gas lease offers, was submitted timely to BLM is not sufficient to overcome the presumption that public officials have properly discharged their duties and have not misplaced or lost the document in issue where the corroborating evidence fails to relate the submission directly to the lease application at issue.

Lawrence E. Dye, 57 IBLA 360 (Sept. 8, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

H. S. Rademacher, 58 IBLA 152 (Sept. 25, 1981)
88 I.D. 873

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. Unsupported and uncorroborated allegations do not constitute probative evidence.

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

WEIGHT

Assay reports have limited probative value concerning the existence of a valuable mineral deposit on a mining claim when they are not supported by sufficient evidence to show how and where the samples were taken and how the samples were treated.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

EVIDENCE--ContinuedWEIGHT--Continued

Where the testimony of appellant's only witness testifying with respect to contract performance was found unworthy of belief and not credible, the Board holds that it has the discretion to reject all the testimony of such witness except that which has been corroborated; and the Board concludes, that except for one of the claims for an equitable adjustment conceded by the Government, there was no corroboration of the discredited testimony, and, therefore, the remaining claims of appellant must be denied for failure to sustain the burden of proof.

Appeal of Scona, Inc., IBCA-1094-1-76 (June 16, 1981)
88 I.D. 590

Where the resolution of a case is influenced by the Administrative Law Judge's findings of credibility, which in turn are based on reaction to the demeanor of the witnesses, and such findings are supported by substantial evidence, the Board will not ordinarily disturb them.

United States v. Gerald H. Braniff, 59 IBLA 337 (Nov. 5, 1981)

EXCHANGES OF LAND

(See also Indian Lands, Private Exchanges, State Exchanges, Wildlife Refuges & Projects--if included in this Index.)

GENERALLY

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

FEDERAL EMPLOYEES AND OFFICERS

(See also Administrative Authority, Claims Against the United States, Officers & Employees--if included in this Index.)

GENERALLY

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

There is a rebuttable presumption that administrative officers properly discharge their duties and do not lose or misfile documents timely filed. Where, however, the BLM computer print-out indicates that evidence of assessment work was received for one of appellant's four mining claims, and where appellant submits a copy of proof of labor for all four claims which had been recorded in the proper county recording office and then submitted to BLM, and where BLM had no record of having issued any adverse decision for the fourth claim but appellant submitted a copy of the decision he had

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

received, the cumulative evidence rebuts the presumption of regularity.

Robert T. Reynolds, 61 IBLA 52 (Dec. 31, 1981)

AUTHORITY TO BIND GOVERNMENT

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

Robert E. Fennell, Clair B. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

Del Rupp, 57 IBLA 297 (Aug. 31, 1981)

Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the Government from regarding the lease as having terminated.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

John Plutt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Lyman Mining Co., 54 IBLA 165 (Apr. 21, 1981)

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The Government is not estopped from requiring the recalculation of royalty payments, even if it has accepted improper payments in the past.

FMC Corp., 54 IBLA 77 (Apr. 14, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace K. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Floyd O. Lochner, 56 IBLA 271 (July 28, 1981)

The Department is not estopped from rejecting an oil and gas lease offer, or canceling a lease issued pursuant thereto, because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Reliance upon erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Estoppel will not lie where allegedly misleading advice is timely rebutted by existing regulations negating the advice given.

Vincent M. D'Amico, Wolt C. Stempel, 55 IBLA 116 (June 3, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the secretarial level. Such reversal upon Departmental review does not constitute retrospective application of a new rule.

Richard E. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level, and where there was no affirmative misconduct by BLM employees.

Alex Sachen, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Semanko, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

Reliance on a Bureau of Land Management pamphlet containing erroneous information does not relieve a claimant of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Evidence of annual assessment work must be delivered to and received by the proper BLM office in order to be filed. Depositing a document in the mails does not constitute filing. Reliance on erroneous information provided by BLM employees which is contrary to regulation does not relieve a mining claimant of this obligation.

Joe L. Watts, 59 IBLA 127 (Oct. 26, 1981)

FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT OF 1977

DISTINCTION BETWEEN COOPERATIVE AGREEMENTS AND GRANTS

If substantial involvement is anticipated between the agency and the state a cooperative agreement is to be used to accomplish the public purpose of support. If no substantial involvement is anticipated a grant agreement should be executed to accomplish the public purpose of support or stimulation authorized by Federal statute. Because substantial involvement is anticipated in the instant matter, a grant agreement would be the proper vehicle for accomplishing the public purpose of support.

Selection of the Proper Legal Instrument (Contract, Grant or Cooperative Agreement) under Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224) to be used in Funding Construction of Recreation Facilities Authorized under the Federal Water Project Recreation Act of 1965 (P.L. 89-72), M-36931 (Jan. 19, 1981)

88 I.D. 228

SELECTION OF INSTRUMENT

Secs. 5 and 6 of the Federal Grant and Cooperative Agreement Act of 1977 require an agency to use a grant or cooperative agreement and not a contract whenever, as in the instant matter, the principal purpose of the relationship between the agency and the state is the transfer of money, property or services or anything of

FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT OF 1977
--Continued

SELECTION OF INSTRUMENT--Continued

value to a state or local government or other recipient to accomplish a public purpose of support or stimulation authorized by a Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for direct benefit or use of the Federal Government.

Selection of the Proper Legal Instrument (Contract, Grant or Cooperative Agreement) under Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224) to be used in Funding Construction of Recreation Facilities Authorized under the Federal Water Project Recreation Act of 1965 (P.L. 89-72), M-36931 (Jan. 19, 1981)

88 I.D. 228

USE OF A CONTRACT

Under sec. 4 of the Federal Grant and Cooperative Agreement Act of 1977, 41 U.S.C. § 501 (1976), a contract would not be used to transfer funds from a bureau to a state for the purpose of constructing recreational facilities on Government owned land when the transaction is accompanied by a long term lease of the land to the state because the principal purpose of the relationship is for the benefit of the state and not "for the direct benefit or use of the Federal Government."

Selection of the Proper Legal Instrument (Contract, Grant or Cooperative Agreement) under Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224) to be used in Funding Construction of Recreation Facilities Authorized under the Federal Water Project Recreation Act of 1965 (P.L. 89-72), M-36931 (Jan. 19, 1981)

88 I.D. 228

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976
(See also Hearings--if included in this Index.)

GENERALLY

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim.

William E. Talbott et al., 52 IBLA 12 (Jan. 5, 1981)

Neither FLPMA nor the Taylor Grazing Act authorizes appropriation of water or provide an independent statutory basis for claims for water uses inconsistent

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

in any way with the substantive requirements of state law.

Supplement to Solicitor Opinion No. M-36914, on Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (Supp.) (Jan. 16, 1981)

88 I.D. 253

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Henri Guzek, 52 IBLA 200 (Jan. 26, 1981)

The standard of review in the case of a right-of-way application for a water diversion project is whether the decision demonstrated a reasoned analysis of the factors involved, with due regard for the public interest. A decision to reject such an application will not be affirmed where the record lacks sufficient reasons to support it.

Eugene V. Vogel, 52 IBLA 280 (Feb. 9, 1981) 88 I.D. 258

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Edward J. Szykowski, Jr., 53 IBLA 310 (Mar. 25, 1981)

When the owner of a lode or placer mining claim files a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, he has complied with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2.

Lester L. Learned, 54 IBLA 147 (Apr. 17, 1981)

The standard of review in the case of right-of-way applications for domestic water pipelines is whether the decision demonstrates a reasoned analysis of the factors involved with due regard for the public interest. A decision by BLM, made in exercise of its discretion, will be affirmed in absence of sufficient reason to disturb it.

Gary and Celia Boucher, 55 IBLA 272 (June 25, 1981)

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sonny Champneys, 58 IBLA 29 (Sept. 16, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

A.C.C.T.S., 60 IBLA 1 (Nov. 12, 1981)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)

ACQUISITIONS

Lands acquired by donation under sec. 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1715 (1976), become "public lands" upon acceptance of title.

Lands acquired pursuant to sec. 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1715 (1976), are not open to mineral location until a notice of availability has been duly published.

Junior L. Dennis, 61 IBLA 8 (Dec. 29, 1981)

ASSESSMENT WORK

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim, or the claim must be presumed abandoned and void.

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Lloyd M. Buttgerreit, 52 IBLA 363 (Feb. 19, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Kerry and Ingrid Douglas, 53 IBLA 18 (Feb. 26, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

Judy H. Genger, 59 IBLA 199 (Oct. 27, 1981)

All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981)

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

Samantha Bowman, 61 IBLA 20 (Dec. 29, 1981)

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the New Mexico State Office by Dec. 30, 1980, will not excuse late filing.

Jack H. Wheatley, 55 IBLA 145 (June 8, 1981)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Feldslite Corporation of America, 56 IBLA 78 (July 15, 1981)
88 I.D. 643

Mrs. Otis Teaford, 56 IBLA 367 (Aug. 3, 1981)

Dave R. Newman, 57 IBLA 23 (Aug. 6, 1981)

Bruce J. Reiss, 57 IBLA 152 (Aug. 25, 1981)

Nelson C. Barry, 57 IBLA 268 (Aug. 31, 1981)

Keith R. O'Hara, 58 IBLA 59 (Sept. 21, 1981)

Inez Crews et al., 59 IBLA 257 (Oct. 29, 1981)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30.

James V. Joyce (On Reconsideration), 56 IBLA 327 (July 30, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Edwin Striegel, Marie A. O'Brien, 60 IBLA 232 (Dec. 4, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

Perry L. Johnson et al., 57 IBLA 20 (Aug. 6, 1981)

Plet Avery, 60 IBLA 159 (Nov. 24, 1981)

The failure of a holder of a tunnel site claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the tunnel site is a curable defect and the tunnel site may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)

John R. Erickson, 57 IBLA 157 (Aug. 25, 1981)

Heidelberg Silver Mining Co., Inc., 58 IBLA 10 (Sept. 16, 1981)

Where the owner of unpatented mining claims located before Oct. 21, 1976, submits copies of the location notices and proof of labor to BLM in June and Aug. 1979, and submits another proof of labor to BLM in Nov. 1980, it has satisfied the current recording requirements of both the Federal Land Policy and Management Act of 1976, and the regulations in 43 CFR Subpart 3833.

Silica Sand Corp., 57 IBLA 76 (Aug. 21, 1981)

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30.

Jack McCarley, 58 IBLA 239 (Oct. 6, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claim located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, evidence of annual assessment work or a notice of intention to hold the mining claim or the mining claim shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

Samuel Waldenberg, 59 IBLA 390 (Nov. 10, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Harvey A. Clifton et al., 60 IBLA 29 (Nov. 16, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, files proof of annual assessment work or a notice of intention to hold the claim in calendar year 1977, the owner is required by the terms of the statute to file proof of assessment work within each calendar year (on or before Dec. 30) thereafter.

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in 1977, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which he recorded in the BLM office, *i.e.*, on or after Jan. 1, and on or before Dec. 30, 1978, the claim is properly deemed conclusively abandoned and void.

N. L. Baroid Petroleum Services, 60 IBLA 90 (Nov. 19, 1981)

CALIFORNIA DESERT CONSERVATION AREA

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherry stems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to great deference.

National Outdoor Coalition, 59 IBLA 291 (Oct. 30, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

CORRECTION OF CONVEYANCE DOCUMENTS

Under sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. BLM's rejection of an application to amend a homestead patent to change the legal description of the land patented will be affirmed where the record does not support a finding that the entryman erred in describing the lands he had entered.

Ben R. Williams, 57 IBLA 8 (Aug. 5, 1981)

DISCLAIMERS OF INTEREST

While the Bureau of Land Management may suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1745 (1976), where no implementing regulations have been issued and where there is no contrary policy directive, an application may be properly rejected where the statutory criteria have not been met.

Edward C. Miller, 56 IBLA 388 (Aug. 3, 1981)

EXCHANGES

State exchange applications pending on Oct. 21, 1976, may be processed under sec. 8(c) of the Taylor Grazing Act, 43 U.S.C. § 315g(c) (1970), only if the state had complied with all the requirements necessary to vest rights to the exchange in the state; all other applications must be processed under sec. 206 of the Federal Land Policy and Management Act of 1976.

A protest against approval of a state exchange application is properly dismissed where the exchange is shown to be in the public interest under sec. 206 of the Federal Land Policy and Management Act of 1976, and it is immaterial that the protestants may be permittees or licensees of the selected lands whose grazing privileges would have been lost upon completion of the exchange, in that neither a licensee nor a permittee has a vested right in the land covered by the license or permit and such land is available for selection by a state.

Bryner Wood, 52 IBLA 156 (Jan. 21, 1981) 88 I.D. 232

State exchange applications pending on Oct. 21, 1976, may be processed under sec. 8(c) of the Taylor Grazing Act, 43 U.S.C. § 315g(c) (1970), only if the state had complied with all the requirements necessary to vest rights to the exchange in the state; all other applications must be processed under sec. 206 of the Federal Land Policy and Management Act of 1976.

A state exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

HEARINGS

Mining claimants who have not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 have no due process right to an evidentiary hearing before the Department of the Interior to show that their actual intent not to abandon rebuts that section's conclusive presumption of abandonment, since the Department is

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

HEARINGS--Continued

duty-bound to enforce the conclusiveness of the statute's presumption whenever noncompliance has occurred, and any such hearing would be valueless.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

INVENTORY AND IDENTIFICATION

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

Even if a 720-acre nonisland area of public land were considered as exhibiting the wilderness characteristics of size, i.e., of sufficient size as to make practicable its preservation and use in an unimpaired condition, sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), would not require review by the Secretary because such a parcel contains less than 5,000 acres.

Where the Bureau of Land Management's final initial inventory decision states that certain public land is eliminated from wilderness review in that it obviously lacks wilderness characteristics because it is too small to make practicable its preservation and use in an unimpaired condition, that decision will be affirmed in the absence of sufficient reasons to change the result.

Save the Glades Committee, 54 IBLA 215 (Apr. 23, 1981)

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

INVENTORY AND IDENTIFICATION--Continued

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

The nonimpairment mandate of sec. 603(c), 43 U.S.C. § 1782(c) (1976), is therefore not applicable to those areas of less than 5,000 acres. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Tri-County Cattlemen's Ass'n, Idaho Cattlemen's Ass'n, 60 IELA 305 (Dec. 18, 1981)

LAND USE PLANNING

Where appellant disagrees with BLM's decision to designate an area for limited use by off-road vehicles and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

John Schandelweier, 56 IELA 284 (July 28, 1981)

Where appellant disagrees with BLM's decision to designate an area as permanently closed for use by off-road vehicles and seeks to have its judgment substituted for that of the decisionmaker, the appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Magic Valley Trail Machine Ass'n, Inc., 57 IBLA 284 (Aug. 31, 1981)

LEASES

Where a lessee of a small tract lease contends the rental set by the Bureau of Land Management is too high, the burden is upon her to prove by positive and substantial evidence that the appraisal is in error.

Lucille S. Hoerning, 57 IBLA 74 (Aug. 20, 1981)

PERMITS

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for an organized off-road motorcycle race where the proposed use would adversely affect critical deer winter range and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

Cascade Motorcycle Club, 56 IBLA 134 (July 20, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Don Chris A. Coyne, 52 IBLA 1 (Jan. 5, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2) (1976), if unpatented mining claims located after Oct. 21, 1976, are not supported annually by either an affidavit of assessment work or a notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intent to abandon and he did not fully understand the regulations.

Dale E. Henkins, 52 IBLA 9 (Jan. 5, 1981)

Where the owner of an unpatented mining claim files a copy of the notice of location of this claim with BLM in 1978, he is required to file a copy of the proof of annual labor performed on the claim during the assessment year ending on Sept. 1, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

Michael Hauger, 52 IBLA 129 (Jan. 16, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

Where a mining claimant submits evidence on appeal which supports a conclusion that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to timely file the required documentation will be set aside.

L. E. Garrison, 52 IBLA 131 (Jan. 16, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, or prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lowell M. Paige, 52 IBLA 137 (Jan. 16, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The Federal regulations at 43 CFR 3833.4(a) do not conflict with 43 CFR 3833.4(b) which pertains to the filing of defective or untimely instruments under laws other than the Federal Land Policy and Management Act of 1976.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

The owner of unpatented mining claims located prior to Oct. 21, 1976, must file a copy of proof of annual assessment work performed during the preceding assessment year on or before Oct. 22, 1979, or the claims are properly declared abandoned and void under 43 CFR 3833.4.

Lloyd Cochran, 52 IBLA 231 (Feb. 3, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1 the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. The requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Johannes Soyland, 52 IBLA 233 (Feb. 3, 1981)

St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Dan Creek Placer Mines, 52 IBLA 243 (Feb. 6, 1981)

Lowell L. Patten, 52 IBLA 299 (Feb. 10, 1981)

Verla Rhoads, Rene Morgan, 52 IBLA 393 (Feb. 24, 1981)

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1976, or on or before Dec. 30 of the calendar year following the calendar year of recording the notice of location, whichever date is sooner, evidence of annual assessment work or a notice of intention to hold the claim.

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR Part 3833, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice of location and evidence of assessment work with BLM on or before Oct. 22, 1979. This requirement was mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

L. L. Falter, John E. Weeks, 52 IBLA 313 (Feb. 10, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Lloyd M. Buttgeriet, 52 IBLA 363 (Feb. 19, 1981)

Mart I. Gilmore, 55 IBLA 128 (June 3, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, the owner of an unpatented mining claim located after Oct. 21, 1976, must file in the proper Bureau of Land Management office evidence of annual assessment work or a notice of intention to hold the claim on or before Dec. 30 of each calendar year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Dean Saylor, 52 IBLA 366 (Feb. 19, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Kerry and Ingrid Douglas, 53 IBLA 18 (Feb. 26, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

Judy H. Genger, 59 IBLA 199 (Oct. 27, 1981)

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

Where the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file evidence of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, having filed such evidence with BLM during calendar year 1978, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

James C. Prebelich, 53 IBLA 34 (Feb. 26, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, and recorded with the Bureau of Land Management in 1979, must file in the proper Bureau of Land Management office evidence of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where the owner of an unpatented mining claim located after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim prior to Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Robert F. Wilkinson, 53 IBLA 106 (Mar. 4, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file conclusively constitutes abandonment of the claim and renders it void.

Janice Fay Ondreako, I. D. Monaghan, 53 IBLA 128 (Mar. 5, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1978, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

A notice of intention to hold a mining claim is required to be an exact copy of a document which was filed in the office of the state where the notice of location was filed. Sec. 314(a)(1) and (2), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (1976); 43 CFR 3833.2-3 (a)(1). Where it is clear from the text of appellants'

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

purported notice of intention to hold that this document was not filed in the local offices of the State of Nevada, it is without legal significance.

Pacific Coast Mines, Inc., 53 IBLA 200 (Mar. 17, 1981)

Where the owners of unpatented mining claims located prior to Oct. 21, 1976, file notices of recordation for such claims with the Bureau of Land Management on Oct. 22, 1979, but fail to file evidence of annual assessment work until Dec. 28, 1979, pursuant to sec. 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a), the failure to file timely the evidence of annual assessment work constitutes conclusive abandonment of the claims and renders the claims void.

John Plutt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Randal Angeloni, Douglas Slixt, 54 IBLA 56 (Apr. 9, 1981)

Andrew Kasamis, 56 IBLA 332 (July 30, 1981)

Dia Art Foundation, 56 IBLA 357 (Aug. 3, 1981)

Robert W. Soehner, 56 IBLA 370 (Aug. 3, 1981)

David Truesdell et al., 57 IBLA 60 (Aug. 17, 1981)

Bonnie L. Chafe, 57 IBLA 384 (Sept. 10, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1979, or the claims will be conclusively deemed to have been abandoned.

Jess E. Minium, Jr., 54 IBLA 134 (Apr. 17, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1 and 3833.4, where the owner of unpatented mining claims located prior to Oct. 21, 1976, fails to file with the proper Bureau of Land Management office on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void, and the claimant's mistaken belief that he had effectively complied with the regulations cannot excuse noncompliance.

Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with ELM in 1979, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

William M. Hand, 54 IBLA 303 (Apr. 29, 1981)

Robert Keough, 54 IBLA 337 (May 5, 1981)

William N. Barbat, 56 IBLA 26 (July 8, 1981)

Where a preponderance of the evidence supports a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be vacated.

Bernard J. Braker, 54 IBLA 332 (May 5, 1981)

Bruce L. Baker, Robert C. Baker, 55 IBLA 55 (May 29, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Richard E. Forsgren, 54 IBLA 362 (May 18, 1981)

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

Vernon Bradley, 57 IBLA 351 (Sept. 8, 1981)

James N. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)

The filing of evidence of assessment work, required by 43 CFR 3833.2-1(a), for any assessment year may be submitted at any time after the work is performed during the assessment year through Dec. 30 following the end of the assessment year.

Thus, filing on Oct. 5, 1979, for the 1980 assessment year which began on Sept. 1, 1979, satisfies the requirement of filing on or before Dec. 30, 1980.

General Electric Co., Nellie McLaughlin, 55 IBLA 185 (June 16, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Where a mining claimant believes that assessment work would be a prohibited or useless act, the claimant should file a notice of intention to hold pursuant to 43 CFR 3833.2-3.

Robert E. Fennell, Clair B. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Robert B. Melcher, 56 IBLA 165 (July 20, 1981)

Dennis A. Lane, 56 IBLA 171 (July 20, 1981)

Jacqueline A. Riddlemoser, 56 IBLA 173 (July 20, 1981)

John R. Davies, 56 IBLA 175 (July 20, 1981)

Edward McNally, Merrill Porter, 56 IBLA 177 (July 20, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Mi-Oro Mining Co., 56 IBLA 179 (July 20, 1981)

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

William O. Bahny, 56 IBLA 190 (July 20, 1981)

Shirley Thompson, Duane R. Thompson, 57 IBLA 154 (Aug. 25, 1981)

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

William T. Best, 56 IBLA 234 (July 22, 1981)

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be affirmed.

Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of intervening inclement weather, loss must be borne by claimant.

Valiant Resources, Inc., 56 IBLA 278 (July 28, 1981)

Deficiencies under the regulations in the content of an affidavit of assessment work or notice of intention to hold filed with the Bureau of Land Management with respect to an unpatented mining claim may be considered curable and do not result in a conclusive presumption of abandonment of the claim where the filing meets the requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded and a copy thereof with the Bureau of Land Management prior to Dec. 31 of the year following the calendar year in which the claim was located under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Ted Dilday, 56 IBLA 337 (July 30, 1981) 88 I.D. 682

Ronald Willden, 60 IBLA 173 (Nov. 24, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Regina McMahon, 56 IBLA 372 (Aug. 3, 1981)

Bruce R. Berringer, 60 IBLA 258 (Dec. 4, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year following the year of recording with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Jack Terwilliger, 56 IBLA 383 (Aug. 3, 1981)

Where a mining claimant files timely an affidavit of assessment work with the Bureau of Land Management as required by sec. 314 of the Federal Land Policy and Management Act of 1976, which is not the affidavit of assessment required to be filed under 43 CFR 3833.2-1, it is a curable defect, and a mining claimant is entitled to notice and a reasonable opportunity to submit the precise instrument. Failure to do so will result in the Bureau of Land Management declaring the claim abandoned and void.

Harry J. Pike, 57 IBLA 15 (Aug. 6, 1981)

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

Perry L. Johnson et al., 57 IBLA 20 (Aug. 6, 1981)

Jack McCarley, 58 IBLA 239 (Oct. 6, 1981)

Plet Avery, 60 IBLA 159 (Nov. 24, 1981)

The mailing of a notice of intention to hold a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

William J. Kroetch, 57 IBLA 29 (Aug. 6, 1981)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

D. E. Bailey, 57 IBLA 120 (Aug. 25, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

John R. Erickson, 57 IBLA 157 (Aug. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the first proof of labor was filed with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Magdalene Pickering Franklin, 57 IBLA 244 (Aug. 27, 1981)

Where, on or before Oct. 21, 1979, a mining claimant files proof of assessment work performed for the preceding assessment year for a claim located on or before Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, the claimant has complied with both the statutory and regulatory requirements for filing assessment work.

Ervin D. Mull, Paul Eichholz, 57 IBLA 278 (Aug. 31, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavit of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1979, or the claim is conclusively deemed abandoned and, thus void.

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Bart Cannon, 57 IBLA 281 (Aug. 31, 1981)

Where the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file evidence of assessment work or notice of intention to hold the claim on or before Dec. 30, 1980, having filed such evidence with BLM during calendar year 1979, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

L. M. Pern, 57 IBLA 339 (Sept. 1, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file in the proper BLM office a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which such notice or evidence was first filed with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Philip Cramer, 57 IBLA 386 (Sept. 10, 1981)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in calendar year 1977, fails to file with BLM an affidavit of assessment work or a proper notice of intention to hold the claim on or before Dec. 30, 1978, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

John T. Motes, Marie Motes, 58 IBLA 62 (Sept. 21, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the official record of a notice of intention to hold or evidence of performance of annual assessment work on the claim, as recorded in the office where the location notice of the claim is recorded, prior to Dec. 31 of each calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement or of the statutory consequences of the claim being deemed conclusively to be abandoned for failure to comply.

Polar Resources Co., 58 IBLA 70 (Sept. 22, 1981)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report provided by sec. 28-1 of Title 30, relating thereto, all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

A detailed map prepared by the mining claimant's geologist, showing the geologist's labor performed on the claims during the assessment year in question, cannot be considered as meeting the requirements of sec. 314 of FLPMA with respect to notice of intention to hold a mining claim, where it was not filed for recordation with the local recording office where the notice of location is prescribed by state law to be recorded.

The language in sec. 314 of FLPMA, 43 U.S.C. § 1744(c) (1976), relating to defective and untimely filings does not protect a claimant from the statutory conclusive presumption of abandonment where he has not met the recordation requirements of FLPMA. It is only

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

defectiveness or untimeliness of filings under other Federal laws that shall not impair the validity of a mining claim which is otherwise valid under FLPMA.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Pursuant to sec. 314 of FLPMA and 43 CFR 3833.2-1(b), the owner of unpatented mining claims situated within any unit of the National Park System must file in the proper office of BLM a notice of intention to hold the claims on or before Dec. 30 of each year following the year in which the claims were recorded with the National Park Service as required by the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), and 36 CFR 9.5. Where a permit to do assessment work has been issued by NPS, the owner of the claims may file evidence of assessment work in lieu of the notice of intention to hold the claims. Failure to file either a notice of intention to hold the unpatented mining claims or evidence of assessment work with the proper BLM office within the time period prescribed conclusively constitutes abandonment of the claims.

Uranus, Inc., 58 IBLA 139 (Sept. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

CONOCO, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Ben Hester, 58 IBLA 163 (Sept. 28, 1981)

Louis E. Sharp, 59 IBLA 223 (Oct. 28, 1981)

Marvin G. Stuck, 60 IBLA 197 (Nov. 27, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The filing of the notice of location of a mining claim does not meet the requirement for filing a notice of intention to hold the mining claim.

Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The mailing of a notice of intention to hold a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

Ralph A. Plumb, 58 IBLA 254 (Oct. 6, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Mrs. Walter E. Bolles, 58 IBLA 257 (Oct. 6, 1981)

A notice of intention to hold a mining claim is required to be an exact copy of a document which was filed in the office of the state where the notice of location was filed. Sec. 314(a)(1) and (2), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(1) and (2) (1976); 43 CFR 3833.2-3(a)(1).

Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Richard W. Thom, 58 IBLA 291 (Oct. 13, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1978, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

A notice of intention to hold mining claims must set forth the information required by 43 CFR 3833.2-3 and be recorded both in the county where the claims are situated and in the proper BLM office to satisfy the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Dennis Forsberg, 58 IBLA 346 (Oct. 19, 1981)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement.

AOS Co., 59 IBLA 112 (Oct. 26, 1981)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The mailing of an affidavit of assessment work concerning a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper Bureau of Land Management office before such date.

John Silva, 59 IBLA 167 (Oct. 26, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Edward Kelley, 59 IBLA 250 (Oct. 29, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because it was delayed in the mail, the consequences must be borne by the claimant.

Inez Crews et al., 59 IBLA 257 (Oct. 29, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claim located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, evidence of annual assessment work or a notice of intention to hold the mining claim or the mining claim shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

Samuel Waldenberg, 59 IBLA 390 (Nov. 10, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elizabeth Francis, 60 IBLA 6 (Nov. 12, 1981)

William Cooper, 60 IBLA 50 (Nov. 17, 1981)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Harvey A. Clifton et al., 60 IBLA 29 (Nov. 16, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2) (1976), the owner of unpatented mining claims located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording whichever date is sooner evidence of annual assessment work performed or a notice of intention to hold the mining claim or the mining claims shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

Buck A. Rogers, 60 IBLA 59 (Nov. 18, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The timely filing of a notice of location of a mining claim with BLM does not satisfy the additional requirement that either evidence of assessment or a notice of intention to hold a mining claim be filed timely. 43 U.S.C. § 1744(a) (1) and (2) (1976); 43 CFR 3833.2-3.

All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 and 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim and a copy of the current proof of labor as recorded in the office where the notice of location is recorded, with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner.

Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

Jannerwanda J. Papaeliou, Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

Karen R. Tony et al., 60 IBLA 167 (Nov. 24, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1977, but which is not accompanied by evidence of assessment work or a notice of intent to hold the claim, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

F. E. F. Mining Co., Inc., 60 IBLA 178 (Nov. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

George Vincent McMahon, 60 IBLA 187 (Nov. 27, 1981)

Edwin Striegel, Marie A. O'Brien, 60 IBLA 232 (Dec. 4, 1981)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

The mailing of a notice of location prior to the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

Prudential Mining & Exploration, Inc., 60 IBLA 363 (Dec. 22, 1981)

When mail is properly addressed and deposited in the United States mails, with postage thereon duly prepaid, there is a rebuttable presumption that it was received by the addressee in the ordinary course of mail.

Delivery by post office of a document to a BLM state office by placement of such mail in the pcst office box where the state office customarily receives its mail, during the hours in which the state office is open to the public for the filing of documents, constitutes delivery to and receipt by the state office of the document.

Where the envelope containing a mining claimant's evidence of annual assessment work required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), addressed to the Oregon State Office, Bureau of Land Management, at its pcst office box address in Portland, Oregon, was postmarked in Seattle, Washington, on Dec. 29, 1980, and it is established that whereas in the ordinary course of mail the letter would have been delivered to the state office at its regular post office box prior to 4:15 p.m. on the following day, the last hour for filing such evidence, but that any mail placed in the post office box after 1 p.m. nevertheless would not have been picked up by the state office until a day later, the evidence of assessment work is presumed to have been filed on Dec. 30, even though the date and time stamp of the state office indicates that it was not received until 7:30 a.m. on Dec. 31.

Washington Chromium Co., 60 IBLA 378 (Dec. 23, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The mailing of an affidavit of assessment work concerning a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the evidence of assessment work is actually received by the proper Bureau of Land Management office before such date.

Samantha Bowman, 61 IBLA 20 (Dec. 29, 1981)

The owner of an unpatented mining claim must file in each calendar year, on or before Dec. 30, either an affidavit of assessment work performed on the claim or a notice of intention to hold the mining claim. Failure to so file results in a conclusive statutory presumption of abandonment of the claim by the owner.

Northern Stone Supply, 61 IBLA 36 (Dec. 29, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

There is a rebuttable presumption that administrative officers properly discharge their duties and do not lose or misfile documents timely filed. Where, however, the BLM computer print-out indicates that evidence of assessment work was received for one of appellant's four mining claims, and where appellant submits a copy of proof of labor for all four claims which had been recorded in the proper county recording office and then submitted to BLM, and where BLM had no record of having issued any adverse decision for the fourth claim but appellant submitted a copy of the decision he had received, the cumulative evidence rebuts the presumption of regularity.

Robert T. Reynolds, 61 IBLA 52 (Dec. 31, 1981)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Melart, Inc., 52 IBLA 5 (Jan. 5, 1981)

Thomas F. Byron, Anna B. Philo, 52 IBLA 49 (Jan. 6, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if unpatented mining claims located after Oct. 21, 1976, are not supported annually by either an affidavit of assessment work or a notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intent to abandon and he did not fully understand the regulations.

Dale E. Henkins, 52 IBLA 9 (Jan. 5, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim.

William E. Talbott et al., 52 IBLA 12 (Jan. 5, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Where a person locates a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of that section shall be deemed conclusively to constitute an abandonment of the mining claim, or mill or tunnel site by the owner.

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Ione M. Brown, 52 IBLA 44 (Jan. 6, 1981)

A copy of a recorded notice or certificate of location of a mining claim will not be accepted by BLM for recordation if it is not accompanied by the service fee required under 43 CFR 3833.1-2(d).

The failure to file an instrument required by 43 CFR 3833.1-2(a), (b), and 3833.2-1 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim and it is properly declared abandoned and void.

Susan Mativo, 52 IBLA 134 (Jan. 16, 1981)

Where a mining claimant attempts to file notices of location for 24 claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only 23 of those claims, BLM shall require the claimant to select 23 claims to which the money tendered shall be applied. The remaining one claim is properly declared abandoned and void in accordance with 43 CFR 3833.4.

Floyd R. Moody, 52 IBLA 153 (Jan. 21, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

Philip I. Griner, 52 IBLA 179 (Jan. 26, 1981)

Michael G. Commons, 52 IBLA 396 (Feb. 24, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Henri Guzek, 52 IBLA 200 (Jan. 26, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Kenneth G. Walker, 52 IBLA 214 (Jan. 30, 1981)

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

Joe Bastone, 52 IBLA 288 (Feb. 9, 1981)

Clyde W. Luke, Betty J. Luke, 53 IBLA 136 (Mar. 9, 1981)

Bruce A. DeRosier, 59 IBLA 283 (Oct. 30, 1981)

John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted for recordation on May 14, 1980, after having been located on May 3, 1980, and the filing fee is not paid to BLM until Aug. 11, 1980, the recordation date of the notice is Aug. 11, 1980, and thus more than 90 days after the date of location.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Ben Martensen, Anne Martensen, Will Halstead, 52 IBLA 253 (Feb. 6, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office within 90 days of location of the claim. This requirement is mandatory and failure to comply constitutes conclusive abandonment of the claim by the owner. By regulation the BLM State Offices are designated the proper offices for mining claim recordation.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.4, filing recordation documents in a Bureau of Land Management District Office, rather than the proper State Office, the day of the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordation upon receipt of the documents after the 90-day deadline had passed.

Jose G. Gonzalez, 52 IBLA 270 (Feb. 6, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR Part 3833, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice of location and evidence of assessment work with BLM on or before Oct. 22, 1979. This requirement was mandatory and failure to

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

comply conclusively constitutes abandonment of the claim by the owner.

L. L. Falter, John E. Weeks, 52 IBLA 313 (Feb. 10, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Robert G. Sunder, Jeanne E. R. Sunder, 52 IBLA 375 (Feb. 19, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under Arizona law, it is the date specified on the notice of location filed with the local recorder's office.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are scrivener's errors.

John C. and Theresa K. Buchanan, 52 IBLA 387 (Feb. 19, 1981)

H. Mason Coggin, 54 IBLA 224 (Apr. 27, 1981)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

The Department revised and amended 43 CFR 3833.0-5(i) by publication in the Federal Register at 44 FR 9722 (Feb. 14, 1979). The purpose of the revision was to avoid the necessity for a claimant to delay filing with BLM until the copy filed with the local recorder became available, by providing that the claimant could file with BLM a reproduction or duplicate of the original instrument "which was or will be filed in the local jurisdiction." Thus, a claimant may not excuse the tardy filing of his mining claim location notice on the ground that the original was not promptly returned from the county recorder's office.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

William H. Tomporowski, 53 IBLA 21 (Feb. 26, 1981)

Walter Schivo, 53 IBLA 40 (Feb. 26, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Paul R. Scott and Betty F. Scott, 53 IBLA 75 (Mar. 2, 1981)

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

Mr. and Mrs. Jack White, 53 IBLA 267 (Mar. 23, 1981)

United States v. Paul M. Koenigsmark et al., 53 IBLA 377 (Mar. 31, 1981)

James Watkins, 54 IBLA 54 (Apr. 9, 1981)

Randal Angeloni, Douglas Blixt, 54 IBLA 56 (Apr. 9, 1981)

John Richard Bodie, 54 IBLA 93 (Apr. 14, 1981)

Joseph Ojurovich, 54 IBLA 100 (Apr. 15, 1981)

Ernest M. Cuzzocreo, 54 IBLA 108 (Apr. 15, 1981)

Bill C. Ross, 54 IBLA 116 (Apr. 16, 1981)

Charles W. McGowan III, 54 IBLA 119 (Apr. 16, 1981)

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

Charley E. Gossett, Jr., et al., 54 IBLA 139 (Apr. 17, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

Dell Warren, 54 IBLA 159 (Apr. 21, 1981)

Lyman Mining Co., 54 IBLA 165 (Apr. 21, 1981)

Clayton V. Curtis, 54 IBLA 184 (Apr. 22, 1981)

William I. Schindler, 54 IBLA 221 (Apr. 23, 1981)

Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

Mrs. Randolph G. Muniz, 54 IBLA 237 (Apr. 27, 1981)

George H. Willis et al., 54 IBLA 239 (Apr. 27, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Bernard J. Braker, 54 IBLA 332 (May 5, 1981)

Philip Brandl, George Vournas, 54 IBLA 343 (May 7, 1981)

Reg Whitson, 55 IBLA 5 (May 26, 1981)

Robert C. Cluzen, 55 IBLA 12 (May 26, 1981)

Sidney Hodges, John Golden, 55 IBLA 17 (May 26, 1981)

Earl Kremiller, 55 IBLA 28 (May 27, 1981)

Glenn D. Graham, Lynne L. Graham, 55 IBLA 39 (May 28, 1981)

Joe Benham, 55 IBLA 45 (May 29, 1981)

Betty L. Henry, 55 IBLA 47 (May 29, 1981)

Bruce L. Baker, Robert C. Baker, 55 IBLA 55 (May 29, 1981)

Alex Stewart, 55 IBLA 105 (June 1, 1981)

Doris McFall, Donald Duncan, Clarence Duncan, 55 IBLA 110 (June 1, 1981)

Alberta K. Romero, 55 IBLA 140 (June 4, 1981)

James K. Pore et al., 55 IBLA 148 (June 8, 1981)

GSA Reserve Corp., 55 IBLA 162 (June 9, 1981)

Howard L. Kirley, 55 IBLA 165 (June 9, 1981)

Joseph Ojurovich, 55 IBLA 182 (June 15, 1981)

W. LeGrande Law, 55 IBLA 193 (June 16, 1981)

Herbert S. McClung, 55 IBLA 260 (June 25, 1981)

Don E. Bates, 55 IBLA 263 (June 25, 1981)

Richard E. Lumas et al., 55 IBLA 382 (June 29, 1981)

Charles M. Lowe et al., 55 IBLA 384 (June 29, 1981)

Melvin and Bernice Larby, 56 IBLA 41 (July 8, 1981)

Jerald D. Ledbetter, 56 IBLA 84 (July 15, 1981)

King of the Hills Mining Co., 56 IBLA 107 (July 16, 1981)

Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)

Walter L. Cosdon, 56 IBLA 112 (July 16, 1981)

Ken Alexander, 56 IBLA 129 (July 16, 1981)

George I. Lakich, 56 IBLA 148 (July 20, 1981)

Lyle I. Thompson, 56 IBLA 155 (July 20, 1981)

Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (July 20, 1981)

Louise P. Shultis, 56 IBLA 163 (July 20, 1981)

Rolland Marshall, 56 IBLA 187 (July 20, 1981)

William C. Bahny, 56 IBLA 190 (July 20, 1981)

Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

Estate of Kenneth D. Stahl, 56 IBLA 276 (July 28, 1981)

L. D. Lamoureux, 56 IBLA 298 (July 28, 1981)

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FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

William E. Bowman, 56 IBLA 312 (July 29, 1981)
Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)
Felmont Oil Corp., 56 IBLA 321 (July 29, 1981)
Caroline E. Brown, 56 IBLA 334 (July 30, 1981)
John E. Urban, 56 IBLA 343 (July 30, 1981)
Loren Nelson, 56 IBLA 352 (Aug. 3, 1981)
Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)
Shannon N. Thornton, 56 IBLA 359 (Aug. 3, 1981)
Estate of Mary B. Ritchie, 56 IBLA 361 (Aug. 3, 1981)
Jerome F. Brown, 56 IBLA 364 (Aug. 3, 1981)
Edith Gion, 56 IBLA 375 (Aug. 3, 1981)
Lela J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)
Norman L. Moon, 57 IBLA 1 (Aug. 5, 1981)
Harry J. Pike, 57 IBLA 15 (Aug. 6, 1981)
Dave R. Newman, 57 IBLA 23 (Aug. 6, 1981)
Howard F. Houser, 57 IBLA 27 (Aug. 6, 1981)
William J. Kroetch, 57 IBLA 29 (Aug. 6, 1981)
M.D.C., Inc., 57 IBLA 35 (Aug. 10, 1981)
Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)
Bill Kaser, 57 IBLA 51 (Aug. 17, 1981)
David Truesdell et al., 57 IBLA 60 (Aug. 17, 1981)
Gordon M. Riggs, 57 IBLA 122 (Aug. 25, 1981)
C.O.G.S., Inc., 57 IBLA 128 (Aug. 25, 1981)
Roy Rowe et al., 57 IBLA 136 (Aug. 25, 1981)
Shirley Thompson, Duane R. Thompson, 57 IBLA 154 (Aug. 25, 1981)
George H. Andrews, 57 IBLA 221 (Aug. 27, 1981)
Polar Resources Co. (On Reconsideration), 57 IBLA 237 (Aug. 27, 1981)
L. Grace Wadsworth, 57 IBLA 242 (Aug. 27, 1981)
Verne G. Long, 57 IBLA 263 (Aug. 28, 1981)
Nelson C. Barry, 57 IBLA 268 (Aug. 31, 1981)
Intermountain Exploration Co., 57 IBLA 271 (Aug. 31, 1981)
Intermountain Exploration Co., 57 IBLA 274 (Aug. 31, 1981)
Rodney N. Cates, 57 IBLA 276 (Aug. 31, 1981)
Del Rupp, 57 IBLA 297 (Aug. 31, 1981)
Erwin Tonne, 57 IBLA 303 (Aug. 31, 1981)
George W. Venable, 57 IBLA 330 (Sept. 1, 1981)
Kathy Shaner, 57 IBLA 349 (Sept. 8, 1981)
Virgie Dowler, 57 IBLA 389 (Sept. 10, 1981)
Virginia M. Johnston, 57 IBLA 392 (Sept. 10, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Heidelberg Silver Mining Co., Inc., 58 IBLA 10 (Sept. 16, 1981)
Steven V. Miskoff, 58 IBLA 32 (Sept. 16, 1981)
Michael J. Mealue, 58 IBLA 35 (Sept. 17, 1981)
Keith R. O'Hara, 58 IBLA 59 (Sept. 21, 1981)
Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)
Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)
James K. Daily, 58 IBLA 134 (Sept. 24, 1981)
Clayton F. Schacht, 58 IBLA 137 (Sept. 25, 1981)
H. S. Rademacher, 58 IBLA 152 (Sept. 25, 1981)
68 I.D. 873
Ben Hester, 58 IBLA 163 (Sept. 28, 1981)
Ray Nyce, 58 IBLA 192 (Sept. 29, 1981)
Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)
Freemont Energy Corp., 58 IBLA 197 (Sept. 29, 1981)
John T. Titus, 58 IBLA 207 (Sept. 29, 1981)
George D. Morrill, H. Grant Noble, 58 IBLA 211 (Sept. 29, 1981)
Tom Applegarth, 58 IBLA 224 (Sept. 30, 1981)
Albert Fouche, James Ulberg, 58 IBLA 230 (Oct. 6, 1981)
Michael J. Fabisiak, 58 IBLA 243 (Oct. 6, 1981)
Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)
John R. Kuhn, 58 IBLA 316 (Oct. 16, 1981)
Lee R. Newsom, 58 IBLA 325 (Oct. 16, 1981)
Donald L. Hoffman, 58 IBLA 327 (Oct. 16, 1981)
Eugene M. Goatcher, 58 IBLA 337 (Oct. 19, 1981)
Dennis Forsberg, 58 IBLA 346 (Oct. 19, 1981)
Frank S. Schiff, 58 IBLA 355 (Oct. 20, 1981)
Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)
Judy Kelley, George Kelley, 58 IBLA 369 (Oct. 20, 1981)
Warren J. Fyten, 58 IBLA 381 (Oct. 21, 1981)
John Evanoff, 58 IBLA 403 (Oct. 21, 1981)
AOS Co., 59 IBLA 112 (Oct. 26, 1981)
Joe L. Watts, 59 IBLA 127 (Oct. 26, 1981)
Don G. Gilbertson, 59 IBLA 143 (Oct. 26, 1981)
Fletcher D. Fisher, 59 IBLA 150 (Oct. 26, 1981)
Teddy W. Morgan, 59 IBLA 153 (Oct. 26, 1981)
George E. Casler, 59 IBLA 189 (Oct. 27, 1981)
Robert C. LeFavre, 59 IBLA 220 (Oct. 28, 1981)
Louis E. Sharp, 59 IBLA 223 (Oct. 28, 1981)
William R. Smith, 59 IBLA 252 (Oct. 29, 1981)
James W. Cole, 59 IBLA 280 (Oct. 30, 1981)
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FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

H. J. Rodabaugh, 59 IBLA 286 (Oct. 30, 1981)
Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)
Hellmut Laue, Arthur J. Devine, 59 IBLA 316 (Nov. 4, 1981)
Lloyd J. Osborn, P.G.C.S., Ltd., 59 IBLA 323 (Nov. 5, 1981)
Lawrence S. McLean, 60 IBLA 65 (Nov. 19, 1981)
W. O. Heinze, 60 IBLA 78 (Nov. 19, 1981)
N. L. Baroid Petroleum Services, 60 IBLA 90 (Nov. 19, 1981)
James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)
Karen R. Tony et al., 60 IBLA 167 (Nov. 24, 1981)
Lee R. Heath, 60 IBLA 171 (Nov. 24, 1981)
Marvin G. Stuck, 60 IBLA 197 (Nov. 27, 1981)
Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (Nov. 27, 1981)
Everett V. Cohoe, 60 IBLA 235 (Dec. 4, 1981)
C. F. Turley, Jr., 60 IBLA 237 (Dec. 4, 1981)
Don Cook, 60 IBLA 255 (Dec. 4, 1981)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim prior to Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Robert F. Wilkinson, 53 IBLA 106 (Mar. 4, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Cleatus Sypult, 53 IBLA 171 (Mar. 16, 1981)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369
Vernon Bradley, 57 IBLA 351 (Sept. 8, 1981)
Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)
United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)
Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)
Elizabeth Francis, 60 IBLA 6 (Nov. 12, 1981)
William Cooper, 60 IBLA 50 (Nov. 17, 1981)
All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981)
George Vincent McMahon, 60 IBLA 187 (Nov. 27, 1981)
Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, mill-site, or tunnel site and it properly is declared abandoned and void.

Edward J. Szykowski, Jr., 53 IBLA 310 (Mar. 25, 1981)

The Bureau of Land Management may require maps of mining claims meeting the requirements of 43 CFR 3833.1-2(c) (5) before accepting the recordation of the claims under 43 U.S.C. § 1744 (1976). However, where the record suggests that the claimant may have complied, the decision declaring her claims abandoned will be vacated and the case remanded.

Marion Birch, 53 IBLA 366 (Mar. 30, 1981)

Recordation of an unpatented mining claim does not render valid any claim which would not otherwise be valid under applicable law. Acceptance by BLM of recordation documents does not constitute a recognition of the validity of the claim and BLM is not estopped to declare the claim null and void where it was located on land withdrawn from mining location at the time of the location.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1979, or the claims will be conclusively deemed to have been abandoned.

Jess E. Minium, Jr., 54 IBLA 134 (Apr. 17, 1981)

When the owner of a lode or placer mining claim files a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, he has complied with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2.

Lester L. Learned, 54 IBLA 147 (Apr. 17, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

It is proper for the Bureau of Land Management to refuse to accept a check postdated 30 days after receipt as satisfactory payment of service fees for recordation of mining claims.

Jesse L. Miller, 54 IBLA 187 (Apr. 22, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1978, or the claims are conclusively deemed abandoned and, thus, void.

Eugene E. Daugherty, 54 IBLA 352 (May 12, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location or the claim will be conclusively deemed to have been abandoned and declared void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(a) of filing in the proper BLM office.

Inspiration Development Co., 54 IBLA 390 (May 20, 1981)
88 I.D. 557

Lowell L. Patten, 55 IBLA 125 (June 3, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

OmcO, Inc., 55 IBLA 77 (June 1, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely the required evidence of assessment work or notice of intention to hold.

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with the proper BLM office within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(b) of filing in the proper BLM office.

Janie S. Nelson, Terry L. Sullivan, 55 IBLA 289 (June 25, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under California law, it is the date of posting location notice on the claim.

The dates of location of mining claims as shown on the notice of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are in error.

C. B. Shannon, 55 IBLA 312 (June 26, 1981)

A decision by the Bureau of Land Management that unpatented millsite claims are abandoned and void because no notice of intent to hold was filed with the recorded notice of location will be reversed. There is no requirement either in the statute or regulations for such filing.

Ronald Cole, 56 IBLA 131 (July 16, 1981)

Cyprus Mines Corp., 56 IBLA 160 (July 20, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void.

Allen Turner, 56 IBLA 280 (July 28, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--ContinuedRECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Apr. 6, 1981, and the filing fees therefor are not paid to BLM until Apr. 27, 1981, the recordation date of the notices is Apr. 27, 1981.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Fred W. Croxen III, 56 IBLA 318 (July 29, 1981)

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Warren Wheeler, 56 IBLA 350 (Aug. 3, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location, or the claim will be conclusively deemed to have been abandoned and declared void.

Kenneth C. Eichner, 56 IBLA 391 (Aug. 3, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The filing with BLM prior to Oct. 21, 1976, of a copy of the notice of the location of an unpatented mining claim, pursuant to the Mining Claims Rights Restoration Act, 30 U.S.C. § 623 (1976), does not relieve the owner of the claim of the filing obligation imposed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and its implementing regulations.

Don E. Robinson, 57 IBLA 5 (Aug. 5, 1981)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--ContinuedRECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

(1976), conclusively presumed to be abandoned and void.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site. These requirements are mandatory and failure to comply within the time period prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, millsite or tunnel site.

Under 43 CFR 3833.1-2(d), a location notice for each mining claim filed for recordation must be accompanied by the stated fee. As this is a mandatory requirement there is no recordation unless the documents are accompanied by the stated fee.

D. L. Nielsen, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(b). This requirement is mandatory and where a mining claimant fails to comply therewith the claims are properly declared abandoned and void.

Art Fields, Russel Adams, 57 IBLA 142 (Aug. 25, 1981)

Bessie L. Rayne, Freddie R. Rayne, 61 IBLA 55 (Dec. 31, 1981)

Where the case records of unpatented mining claims located prior to Oct. 21, 1976, disclose that prior to Oct. 22, 1979, both copies of notices of location and proofs of assessment work were filed with the proper office of the Bureau of Land Management, it is not proper to declare the claims abandoned and void because the evidence of assessment work was filed prior to the filing of the copies of the notices of location.

Leland W. Wiscombe, Dudley L. Davis, 57 IBLA 161 (Aug. 25, 1981)

It is gross error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit a proof of labor when the case files of the subject mining claims reflect that a proof of labor was timely submitted to BLM and BLM had acknowledged receipt thereof.

Parish Chemical Co., 57 IBLA 240 (Aug. 27, 1981)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

claims by the owners, and they are properly declared void.

Richard E. and Gloria M. Naas, Michael D. and Echo Ayoub, 57 IBLA 266 (Aug. 28, 1981)

Phyllis J. Birchard, 59 IBLA 247 (Oct. 29, 1981)

Herman Black, 60 IBLA 229 (Dec. 4, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavit of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1979, or the claim is conclusively deemed abandoned and, thus void.

Bart Cannon, 57 IBLA 281 (Aug. 31, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The fact that mining claims are oil placer claims and that there is production on the claims does not prevent the conclusive abandonment and voiding of the claims for failure to comply with FLPMA's recordation requirements.

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

The failure of the owner of an unpatented mining claim to furnish a date of location, not indicated in a copy of the notice of location of the claim filed with BLM, in response to a notice of deficiency requiring the submission of such date within 30 days, may be waived where BLM already had evidence of when the claim was located, the person entrusted with such matters was incapacitated during this time period, and the claimant promptly furnished the date of location upon learning of the failure to respond timely.

Park City Chief Mining Co., 57 IBLA 342 (Sept. 3, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed for recordation shall be accompanied by a one time \$5 service fee. This is a mandatory requirement and without payment of the fee there can be no recordation.

Park City Chief Mining Co., 57 IBLA 346 (Sept. 3, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sonny Champneys, 58 IBLA 29 (Sept. 16, 1981)

A notice of location which is in proper form and timely filed with the correct fee must be accepted and recorded by BLM notwithstanding the protest of a rival mining claimant that he has a superior and exclusive possessory right to the same ground. Such disputes are not within the jurisdiction of this Department, and can be resolved only by private litigation between the parties in courts of competent jurisdiction.

W. W. Allstead, 58 IBLA 46 (Sept. 21, 1981)

Mining claims are properly declared abandoned and void where copies of the notices of location are not filed with the proper Bureau of Land Management office within the time periods prescribed by sec. 314 of the Federal Land Policy and Management Act of 1976.

Donald Jardine, 58 IBLA 49 (Sept. 21, 1981)

Richard Thorpe, Anne Thorpe, 59 IBLA 176 (Oct. 26, 1981)

Notices of locations for various mining claims and millsites filed for recordation under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), must be rejected where the claims and millsites were previously held null and void following Departmental contest proceedings.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

J. G. Womack, 58 IBLA 85 (Sept. 22, 1981)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Dec. 30 of each year, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

W. LeRoy Ewell, 58 IBLA 121 (Sept. 24, 1981)

Riter Ekker, Kerry B. Ekker, 58 IBLA 251 (Oct. 6, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The failure to file copies of the official record of notices of location of a mining claim within 90 days after the date of location must be deemed conclusively to constitute an abandonment of the mining claim. There is no provision for waiver of this mandatory requirement, and where delivery of the location notices is delayed by the Postal Service, the consequences of the late filing must be borne by the claimant.

Whelan's Mining and Exploration, Inc., 58 IBLA 127 (Sept. 24, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Modoc Gem and Mineral Society, 58 IBLA 142 (Sept. 25, 1981)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Where mining claims were located in 1940 and copies of the official record of the notices of location were not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by sec. 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), are subject to the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

CONOCO, INC., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

The recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), applies to claims which rely on the provision of 30 U.S.C. § 38 (1976) to prove location and posting. Where such claims have not been duly recorded, they are a nullity.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

John T. Sreaton et al., 59 IBLA 108 (Oct. 26, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper office of BLM within 90 days after the date of location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lee Smart, 59 IBLA 235 (Oct. 28, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), where the owner of unpatented mining claim located before Oct. 21, 1976, submits a copy of the location notice to BLM in April 1978, and proof of labor to BLM in Oct. 1979, but fails to submit evidence of annual assessment work or notice of intention to hold the mining claim on or before Dec. 30, 1980, BLM properly declares the mining claim abandoned and void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Roy B. Smalley et al., 59 IBLA 238 (Oct. 28, 1981)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located on Federal land after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location.

Pursuant to 43 CFR 3833.1-2(d), payment of a \$5 service fee must accompany the filing with BLM of each notice or certificate of mining location; otherwise, each unpaid filing shall be rejected.

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Raymond N. McCool, Harold P. Hinds, 60 IBLA 62 (Nov. 19, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Where the mining claimant files timely a notice of location in the wrong BLM state office, the claim is deemed abandoned and void even though the document was not returned in time to correct the error.

Susan Bettles, 60 IBLA 75 (Nov. 19, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 and 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim and a copy of the current proof of labor as recorded in the office where the notice of location is recorded, with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner.

Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file evidence of assessment work per () a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

The presumption that BLM officials properly discharge their duties in receiving and promptly date stamping official filings tendered them is not overcome by unsupported allegations of mining claimants that BLM lost or misprocessed their evidence of assessment work.

Junewanda J. Papaeliou, Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR Subpart 3833 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claims by the owner.

Jack and Lisa Silbaugh, William E. Dam, 60 IBLA 217 (Nov. 30, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Where a mining claim was located in September 1974 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Nicolaus P. Newby, 60 IBLA 264 (Dec. 15, 1981)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Prudential Mining & Exploration, Inc., 60 IBLA 363 (Dec. 22, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)

REPEALERS

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

Sam McCrack, 52 IBLA 56 (Jan. 6, 1981)

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RESERVATION AND CONVEYANCE OF MINERAL INTERESTS

Bureau of Land Management may reject an application for conveyance of mineral interests pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), upon a determination that the application is fatally defective under 43 CFR 2720 or that conveyance would not be in the public interest.

Dean A. and Craig D. Clark, 53 IBLA 362 (Mar. 30, 1981)

An application for conveyance of mineral interest to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), may be approved where BLM determines (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Absent a finding of the existence of one of these conditions, an application is properly rejected.

David D. Plater, 55 IBLA 296 (June 26, 1981)

Under sec. 209 of FLPMA, 43 U.S.C. § 1719 (1976), the Secretary may convey mineral interests only where there are no known mineral values in the land, or where the reservation of mineral rights would interfere with or preclude appropriate nonmineral development of the land which would be a more beneficial use of the land than mineral development. Where the land contains a producing oil well and there is no showing that the reservation is interfering with or precluding nonmineral development which is a more beneficial use of the land than mineral development, an application for conveyance is properly rejected.

San Patricio County, 61 IBLA 80 (Dec. 31, 1981)

RIGHTS-OF-WAY

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Utah Power and Light Co., 52 IBLA 105 (Jan. 12, 1981)

Southern California Edison Co., 55 IBLA 210 (June 18, 1981)

The standard of review in the case of a right-of-way application for a water diversion project is whether the decision demonstrated a reasoned analysis of the factors involved, with due regard for the public interest. A decision to reject such an application will not be affirmed where the record lacks sufficient reasons to support it.

Rejection of a right-of-way application for a water diversion project will not be affirmed where the record does not support a finding that approval would be incompatible with BLM's timber management plan; that it would adversely affect wildlife; or that it would result in a cumulative adverse impact contrary to the public interest.

Eugene V. Vogel, 52 IBLA 280 (Feb. 9, 1981) 88 I.L. 258

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

While the question of the establishment of a public highway under the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, is ultimately a matter for the state courts, BLM may properly decide the matter for its own purposes where such a question arises during the consideration of an application for a private access road right-of-way under sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976).

A Bureau of Land Management decision rejecting a right-of-way application for a private access road, filed pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), because the road in question is a public highway established pursuant to the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, will be vacated where the evidence in the record does not support the finding that the road is a public highway.

Nick Dire et al., 55 IBLA 151 (June 8, 1981)

The standard of review in the case of right-of-way applications for domestic water pipelines is whether the decision demonstrates a reasoned analysis of the factors involved with due regard for the public interest. A decision by BLM, made in exercise of its discretion, will be affirmed in absence of sufficient reason to disturb it.

Gary and Celia Boucher, 55 IBLA 272 (June 25, 1981)

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest. Where, however, an applicant significantly controverts BLM's reasons for rejecting his application, the case will be remanded to allow BLM to respond to the issues raised on appeal and to reconsider the application in light thereof.

Patrick O. Brown, 55 IBLA 336 (June 26, 1981)

Sec. 506 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1766 (1976), affords certain due process procedural protections to the holder of a right-of-way; however, sec. 506 is not applicable to the holder of a pre-FLPMA easement for a right-of-way granted under the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), who has not conformed the right-of-way to a FLPMA right-of-way pursuant to sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), because such an easement for a right-of-way was not granted, issued, or renewed pursuant to Title V of FLPMA.

"Right-of-way grant" is defined in the regulations, 43 CFR 2800.0-5(h), as an instrument issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1976). By implementing regulation, 43 CFR 2803.4, the Secretary has limited the applicability of sec. 506 of FLPMA, 43 U.S.C. § 1766 (1976), to "right-of-way grants."

James W. Smith (On Reconsideration), 55 IBLA 390 (June 30, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

A communications site right-of-way issued pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1976), which expires after the effective date, Oct. 21, 1976, of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), may not be renewed under the Act of Mar. 4, 1911, because that Act was repealed by FLPMA.

Donald R. Clark, 56 IBLA 167 (July 20, 1981)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. However, where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(b)(1), states that the Secretary shall require an applicant for a right-of-way to submit certain information prior to the issuance of the right-of-way, and an application for such right-of-way is properly canceled where the applicant fails to comply with the requirements.

John W. Barbee et al., 60 IBLA 81 (Nov. 19, 1981)

Where a communications site right-of-way has been issued for a television translator site to provide improved television reception to a remote area, the holder of the right-of-way does not qualify for a waiver of the fair market rental as providing a "valuable benefit to the public" without charge under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), and 43 CFR 2803.1-2.

New Mexico Broadcasting Co., 60 IBLA 163 (Nov. 24, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

Generally, new procedural regulations may be promulgated with retroactive effect and applied to a holder of preexisting interests. However, the present revised regulations in 43 CFR Part 2800 were not written with such effect. Therefore, where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

RULES AND REGULATIONS

While the Bureau of Land Management may suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1745 (1976), where no implementing regulations have been issued and where there is no contrary policy directive, an application may be properly rejected where the statutory criteria have not been met.

Edward C. Miller, 56 IBLA 388 (Aug. 3, 1981)

Under 43 CFR 3833.1-2(d), a location notice for each mining claim filed for recordation must be accompanied by the stated fee. As this is a mandatory requirement there is no recordation unless the documents are accompanied by the stated fee.

D. L. Nielsen, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

Pursuant to 43 CFR 3833.1-2(d), payment of a \$5 service fee must accompany the filing with BLM of each notice or certificate of mining location; otherwise, each unpaid filing shall be rejected.

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

SALES

The exercise of a right of first refusal pursuant to sec. 214 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1722 (1976), by one having a preference right to purchase public land in accordance with sec. 2 of the Unintentional Trespass Act of 1968, 43 U.S.C. § 1432 (1976), is properly rejected when the preference right holder fails to submit satisfactory evidence of the ownership of contiguous lands within the time specified by the authorized officer as provided by regulation.

Lorraine Laufer (Trust), 52 IBLA 227 (Jan. 30, 1981)

BLM properly rejects an application to purchase mineral rights where the record shows that these rights were previously sold to a private party. In the absence of any proof to the contrary, it is presumed that the sale of these interests was regularly consummated by the issuance of a deed or other appropriate instrument of conveyance to the private party.

Watkins Hutcheson Building Co., Inc., 54 IBLA 137 (Apr. 17, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

SERVICE CHARGES

A copy of a recorded notice or certificate of location of a mining claim will not be accepted by BLM for recordation if it is not accompanied by the service fee required under 43 CFR 3833.1-2(d).

Susan Mativo, 52 IBLA 134 (Jan. 16, 1981)

Where a mining claimant attempts to file notices of location for 24 claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only 23 of those claims, BLM shall require the claimant to select 23 claims to which the money tendered shall be applied. The remaining one claim is properly declared abandoned and void in accordance with 43 CFR 3833.4.

Floyd R. Moody, 52 IBLA 153 (Jan. 21, 1981)

WILD AND FREE-ROAMING HORSES AND BURROS

Where the Bureau of Land Management has retained custody of wild free-roaming horses, adopted pursuant to the Act of Dec. 15, 1971, as amended, 16 U.S.C.A. § 1331 (West Supp. 1980), on the basis that the horses have been commercially exploited and the case presents substantial issues of fact, the assignees under the original cooperative agreements are entitled to a hearing before an Administrative Law Judge.

Geneva Barry et al., 54 IBLA 48 (Apr. 9, 1981)

WILDERNESS

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Where the Bureau of Land Management fails to designate an inventory unit as a Wilderness Study Area (WSA) because, inter alia, it lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation, and thereafter a protest and appeal are filed which contain no affirmative allegations of facts or provide no legal arguments sufficient to compel a reversal, BLM's decision will be affirmed.

Sierra Club, 53 IBLA 159 (Mar. 12, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Sierra Club, 54 IBLA 31 (Apr. 6, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--ContinuedWILDERNESS--Continued

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

Even if a 720-acre nonisland area of public land were considered as exhibiting the wilderness characteristics of size, i.e., of sufficient size as to make practicable its preservation and use in an unimpaired condition, sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), would not require review by the Secretary because such a parcel contains less than 5,000 acres.

Where the Bureau of Land Management's final initial inventory decision states that certain public land is eliminated from wilderness review in that it obviously lacks wilderness characteristics because it is too small to make practicable its preservation and use in an unimpaired condition, that decision will be affirmed in the absence of sufficient reasons to change the result.

Save the Glades Committee, 54 IBLA 215 (Apr. 23, 1981)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Richard J. Leamont, 54 IBLA 242 (Apr. 27, 1981)
88 I.D. 490

Sec. 603 of the Federal Land Policy and Management Act directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

Where, after initial wilderness inventory, the Bureau of Land Management decides that an area might possess wilderness characteristics, an appellant who objects to such a determination must show that there is no realistic possibility that these lands may be suitable for wilderness designation.

Jerry D. Reynolds, 54 IBLA 300 (Apr. 29, 1981)

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--ContinuedWILDERNESS--Continued

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

Sec. 603 of the Federal Land Policy and Management Act directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

Where the definition of "road," utilized in the Wilderness Inventory Handbook, cannot be said to be contrary to the statutory language or legislative intent manifested in sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), decisions employing such definition will not be set aside on appeal unless it can be shown that it was improperly applied.

The Bureau of Land Management can regulate the route and method of state access to lands in a designated wilderness study area in order to prevent impairment of wilderness characteristics under sec. 603(c) of the Federal Land Policy and Management Act of 1976, so long as such limitations do not impair full economic development of state school lands and lands chosen in lieu thereof.

California State Lands Commission, 58 IBLA 213 (Sept. 29, 1981)

Valid existing rights are limitations upon the Secretary's authority to manage activities occurring within wilderness study area under the nonimpairment standard. In general, the nonimpairment standard remains the management norm unless it would preclude enjoyment of the rights. When it is determined that the rights can be enjoyed only through activities that will permanently impair an area's suitability, the Secretary must manage the lands to prevent unnecessary and undue degradation and to afford environmental protection.

The Bureau of Land Management Wilderness Review and Valid Existing Rights, M-36910 (Supp.) (Oct. 5, 1981)
88 I.D. 909

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness. BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherry systems), thereby excluding such lands from wilderness review and permitting adjacent

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--ContinuedWILDERNESS--Continued

lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to great deference.

National Outdoor Coalition, 59 IBLA 291 (Oct. 30, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Bureau of Land Management's practice of designating an area containing roads or other intrusions as a nonwilderness corridor (cherry system), thereby excluding such area from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful or prohibited practice in fulfilling the inventory phase of the wilderness review program.

C. E. K. Petroleum Co., 59 IBLA 301 (Nov. 3, 1981)

The Bureau of Land Management has authority to determine the route of a pipeline authorized under 30 U.S.C. § 185 (1976), and is required to consider all relevant factors including its impact on proposed WSA's, as well as the cost to the applicant, in selecting any specific route.

Fuel Resources Development Co., 59 IBLA 378 (Nov. 9, 1981)

An appellant or intervenor requesting this Board to reverse a Bureau of Land Management decision regarding the inclusion or exclusion of a unit of land as a wilderness study area must show the decision to be based on a clear and specific error of law or fact, otherwise the Board will affirm.

Merrill G. Hastings, 60 IBLA 54 (Nov. 17, 1981)

The Bureau of Land Management may designate an area as a wilderness study area, in accordance with sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), even though it is traversed by a temporary road constructed pursuant to a right-of-way permit granted after the effective date of the Act where BLM has taken actions to ensure

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--ContinuedWILDERNESS--Continued

that such a grant would not result in permanent impairment of the area for suitability for preservation as wilderness.

California Ass'n of Four-Wheel Drive Clubs, Inc.,
National Outdoor Coalition, 60 IBLA 240 (Dec. 4, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendations as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Under Organic Act Directive No. 78-61, Change 3, July 12, 1979, the effects of the imprints of man which occur outside an inventory unit are generally factors to be considered during the study phase of the wilderness review program. Imprints of man outside the unit may be considered during the inventory stage only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not considered reasonable application of inventory guidelines would be lost.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherry systems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Jacqueline L. McGarva, Cal-Neva Willow Creek Range Improvement Ass'n, 60 IBLA 278 (Dec. 17, 1981)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

The nonimpairment mandate of sec. 603(c), 43 U.S.C. § 1782(c) (1976), is therefore not applicable to those areas of less than 5,000 acres. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Tri-County Cattlemen's Ass'n, Idaho Cattlemen's Ass'n,
60 IBLA 305 (Dec. 18, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

The existence of mining operations actually being conducted on the land on Oct. 21, 1976, and not mere statutory right to use is required to authorize subsequent mining activities in the same manner and degree.

A mining claim located prior to the Federal Land Policy and Management Act of 1976 (Oct. 21, 1976) on which a valid discovery has existed from Oct. 21, 1976, to the present constitutes a valid existing right. The owner of such a claim on land under wilderness review will be allowed to continue mining operations to full development even if operations will impair wilderness suitability, subject to regulation to preclude unnecessary or undue degradation of the land and its resources.

Dale F. Gimblett, 60 IBLA 341 (Dec. 22, 1981)

Havlah Group, 60 IBLA 349 (Dec. 22, 1981) 88 I.D. 1115

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Conoco, Inc. et al., 61 IBLA 23 (Dec. 29, 1981)

WITHDRAWALS

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

Sam McCormack, 52 IBLA 56 (Jan. 6, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WITHDRAWALS--Continued

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT
(See also Surplus Property--if included in this Index.)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

FEES

(See also Accounts--if included in this Index.)

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely the required evidence of assessment work or notice of intention to hold.

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

FREEDOM OF INFORMATION ACT (Act of June 5, 1967)

FOIA's exemptions do not prevent USGS from publishing its finding that a well is producible or from releasing well logs.

USGS finding that a well is producible is a central event in the operation of the Outer Continental Shelf Lands Act, as amended. Therefore, FOIA requires USGS to release this finding to the public.

Well logs and findings of producibility are not "trade secrets" within the meaning of 18 U.S.C. § 1905 (1976).

Sec. 1905 allows disclosures authorized by law. 30 CFR 250.3, promulgated pursuant to 43 U.S.C. § 1352(c) (Supp. II 1978) and the Administrative Procedure Act, is adequate authority for disclosure of a lessee's well log after a two-year period of confidentiality.

Whether the U.S. Geological Survey May Make Public Certain Information About Offshore Oil and Gas Wells, M-36925 (Nov. 24, 1980) 88 I.D. 699

GEOLOGICAL SURVEY

A determination by the Geological Survey to include certain land within the participating area of a producing oil or gas well established pursuant to an approved unit agreement will not be set aside where it is not arbitrary or capricious and is supported by competent evidence, and the appellant has not demonstrated by a clear and definite showing that the determination was in error.

Davis Oil Co., 53 IBLA 62 (Mar. 2, 1981)

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

An appellant who challenges a determination by the Geological Survey as to the value of gas or other hydrocarbons produced from a Federal oil and gas lease must show not merely that the methodology utilized by Geological Survey is susceptible to error; it must show that error did, in fact, occur.

An Area Supervisor's order which requires that royalty be based on either the price specified in the order or the amount actually received, whichever is greater, comports with all regulatory requirements as to definitiveness and finality.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

GEO THERMAL LEASES

(See also Hearings, Mineral Leasing Act--if included in this Index.)

DISCRETION TO LEASE

Decisions by BLM to require acceptance of special stipulations prior to leasing certain lands for geothermal resources will be upheld when the record shows that the decisions reflect a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decisions is shown. Where Geological Survey has reported that lands sought are valuable for geothermal resources and Congress recently passed legislation in support of the development of geothermal resources, decisions requiring no surface occupancy stipulations will be set aside and the cases remanded for consideration of the feasibility of the leases issuing with less onerous stipulations.

Earth Power Corp., Thermal Resources, Inc., 55 IBLA 249 (June 22, 1981) 88 I.D. 609

LANDS SUBJECT TO

Congress, with the passage of the Geothermal Steam Act, 30 U.S.C. § 1001 et seq., intended that geothermal leases be deemed as within the mineral leasing exception of sec. 4(d)(3) of the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3). Designated wilderness are open to geothermal leasing to the same extent they would have been at the date of their creation. Such leases are subject to the provisions of sec. 4(d)(3) of the Wilderness Act.

Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981) 88 I.D. 813

GEO THERMAL LEASES--ContinuedREINSTATEMENT

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence. The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment to an out-of-town destination 1 day before the anniversary date of the lease does not constitute reasonable diligence.

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Neither the long term absence of appellant's secretary in this case nor the inexperience of appellant's other employees is a justifiable excuse for lack of payment of rental.

Leonard Lundgren, 53 IBLA 149 (Mar. 11, 1981)

A geothermal lease, terminated by operation of law for failure to pay timely the annual rental, will not be reinstated where the lessee through simple inadvertence mailed the rental payment to the wrong Bureau of Land Management office.

Thermal Resources, Inc., 54 IBLA 329 (May 5, 1981)

RENTALS

Where the holder of geothermal resource leases mistakenly pays only half the amount of the full annual rental due by the anniversary date of the lease, the leases automatically terminate by operation of law and the cases are properly closed on the BLM records.

W. H. Hunt, 55 IBLA 14 (May 26, 1981)

STIPULATIONS

Decisions by BLM to require acceptance of special stipulations prior to leasing certain lands for geothermal resources will be upheld when the record shows that the decisions reflect a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decisions is shown. Where Geological Survey has reported that lands sought are valuable for geothermal resources and Congress recently passed legislation in support of the development of geothermal resources, decisions requiring no surface occupancy stipulations will be set aside and the cases remanded for consideration of the feasibility of the leases issuing with less onerous stipulations.

Earth Power Corp., Thermal Resources, Inc., 55 IBLA 249 (June 22, 1981) 88 I.D. 609

GEOTHERMAL LEASES--Continued

TERMINATION

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence. The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

Leonard Lundgren, 53 IBLA 149 (Mar. 11, 1981)

A geothermal lease, terminated by operation of law for failure to pay timely the annual rental, will not be reinstated where the lessee through simple inadvertence mailed the rental payment to the wrong Bureau of Land Management office.

Thermal Resources, Inc., 54 IBLA 329 (May 5, 1981)

Where the holder of geothermal resource leases mistakenly pays only half the amount of the full annual rental due by the anniversary date of the lease, the leases automatically terminate by operation of law and the cases are properly closed on the BLM records.

W. H. Hunt, 55 IBLA 14 (May 26, 1981)

GEOTHERMAL RESOURCES

"Mineral." Geothermal steam, as defined in sec. 2(c) of the Geothermal Steam Act of 1970, 30 U.S.C. § 1001(c), is not a "mineral" as the term is used in the mineral leasing laws. Congress generally did not intend the Steam Act to be treated as a "mineral leasing law."

Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981) 88 I.D. 813

GRAZING LEASES

(See also Taylor Grazing Act--if included in this Index.)

APPLICATIONS

Where an applicant for a grazing lease has committed repeated, willful trespasses on the public lands resulting in the cancellation of the applicant's grazing preference, the area manager may properly reject an application to lease on the basis that it would not be in the best interest of proper range management to issue a lease to the applicant in preference over other qualified applicants for the same land.

James M. Stoops, 57 IBLA 394 (Sept. 10, 1981)

PREFERENCE RIGHT APPLICANTS

Where an applicant for a grazing lease has committed repeated, willful trespasses on the public lands resulting in the cancellation of the applicant's grazing preference, the area manager may properly reject an application to lease on the basis that it would not be in the best interest of proper range management to

GRAZING LEASES--Continued

PREFERENCE RIGHT APPLICANTS--Continued

issue a lease to the applicant in preference over other qualified applicants for the same land.

James M. Stoops, 57 IBLA 394 (Sept. 10, 1981)

GRAZING PERMITS AND LICENSES

(See also Appeals, Hearings, Taylor Grazing Act--if included in this Index.)

GENERALLY

In ascertaining the reasonableness of a rental rate increase for grazing lands permitted under authority of 25 CFR Part 151, it was error for the Administrative Law Judge to conclude that "fair annual return" to which Indian landowners are entitled under the regulations is "something different and less than fair market value."

The independent market survey utilized by the Bureau of Indian Affairs in justifying an increase in grazing rental rates on the Fort Berthold Reservation cannot be regarded as invalid on grounds that off-reservation transactions were included in the survey.

In reviewing action of the Bureau of Indian Affairs in raising grazing rental rates, the Board of Indian Appeals should overturn the action only if it is found to be unreasonable. As long as the Bureau's action is supported in law and by substantial evidence, it would be an inappropriate intrusion into the Bureau's function for the Board to substitute its judgment for the agency's.

Fort Berthold Land and Livestock Association v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IEIA 230 (Feb. 20, 1981) 88 I.D. 315

An Administrative Law Judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by an Administrative Law Judge for trespasses are supported by the record and comport with the proscriptions of the regulations they will not be modified on appeal unless it appears that they are unreasonable, inequitable, or otherwise inappropriate.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

ADJUDICATION

A decision of the Bureau of Land Management which does not reduce applicant's grazing use on an allotment but which restricts such use to the primary grazing season and precludes limited use during the winter will be sustained as an exercise of the discretionary authority to manage grazing lands where the record establishes a rational basis for that decision consistent with range management objectives.

Hugh A. Tipton, 55 IBLA 68 (June 1, 1981)

APPEALS

A decision of the Bureau of Land Management which does not reduce applicant's grazing use on an allotment but which restricts such use to the primary grazing season and precludes limited use during the winter will be sustained as an exercise of the discretionary authority to manage grazing lands where the

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

record establishes a rational basis for that decision consistent with range management objectives.

Hugh A. Tipton, 55 IBLA 68 (June 1, 1981)

CANCELLATION OR REDUCTION

An Administrative Law Judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by an Administrative Law Judge for trespasses are supported by the record and comport with the proscriptions of the regulations they will not be modified on appeal unless it appears that they are unreasonable, inequitable, or otherwise inappropriate.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

BLM may temporarily suspend portions of maximum allowable active grazing preferences under 43 CFR 4110.3-2(a) authorizing suspensions in cases of "drought, fire, or other natural causes," in order to provide forage for excess wild horses.

Bar X Sheep Co. et al., 56 IBLA 258 (July 24, 1981)
88 I.D. 665

HEARINGS

Settlement agreements compromising prior trespasses may be considered an admission of liability only where, by the terms of a settlement, liability is admitted. Where, however, liability has been initially determined in a Departmental adjudication, such a determination is properly considered in a subsequent hearing. As probative of the issue of "repeated" violations, absent a stipulated settlement which expressly vacates the factual determinations made in the prior adjudication.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981)
88 I.D. 275

TRESPASS

In determining whether grazing trespasses are "willful," intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his or her conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981)
88 I.D. 275

An Administrative Law Judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by an Administrative Law Judge for trespasses are supported by the record and comport with the proscriptions of the regulations they will not be modified on appeal unless it appears that

GRAZING PERMITS AND LICENSES--Continued

TRESPASS--Continued

they are unreasonable, inequitable, or otherwise inappropriate.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

HEARINGS

(See also Administrative Procedure, Federal Land Policy & Management Act of 1976, Geothermal Leases, Grazing Permits & Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act, Water Pollution Control--if included in this Index.)

Settlement agreements compromising prior trespasses may be considered an admission of liability only where, by the terms of a settlement, liability is admitted. Where, however, liability has been initially determined in a Departmental adjudication, such a determination is properly considered in a subsequent hearing. As probative of the issue of "repeated" violations, absent a stipulated settlement which expressly vacates the factual determinations made in the prior adjudication.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981)
88 I.D. 275

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Roselyn Isaac (On Reconsideration), 53 IBLA 306 (Mar. 25, 1981)

Where the Bureau of Land Management has retained custody of wild free-roaming horses, adopted pursuant to the Act of Dec. 15, 1971, as amended, 16 U.S.C.A. § 1331 (West Supp. 1980), on the basis that the horses have been commercially exploited and the case presents substantial issues of fact, the assignees under the original cooperative agreements are entitled to a hearing before an Administrative Law Judge.

Geneva Barry et al., 54 IBLA 48 (Apr. 9, 1981)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate court proceedings against the application. The State of

HEARINGS--Continued

Alaska must be given an opportunity to participate as a party to such contest.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. J. L. Noss and Mary F. Noss, 54 IBLA 355 (May 12, 1981)

Where a Native allotment application filed in 1961 is rejected, more than 13 years after applicant has submitted acceptable evidence of his use and occupancy of the land for more than the required 5-year period set out in the appropriate statute, solely on the basis of a Geological Survey report in 1974 that the land was believed to be prospectively valuable for phosphate, the decision rejecting the application will be set aside and the matter remanded to BLM to proceed to issuance of patent as land must be considered to be nonmineral in character absent a showing that minerals are present in such quantities and such qualities as would induce a person of ordinary prudence to expend time and money with a reasonable prospect of success in developing a paying mine thereon.

Heirs of Simon Paneak, 55 IBLA 305 (June 25, 1981)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened.

United States v. Alice M. Rouse et al., 56 IBLA 36 (July 8, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was withdrawn for lighthouse purposes, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Stanislaus Mike, 56 IBLA 69 (July 10, 1981)

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial Bureau of Land Management decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements.

Gary Willis, 56 IBLA 217 (July 22, 1981)

HEARINGS--Continued

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record completed at the hearing, despite the absence of evidence in support of the party's case.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

A mining claimant is not entitled to a hearing before his claim can be declared invalid for having been located on land which is segregated from location.

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone and Telegraph Co. (On Reconsideration), 59 IBLA 343 (Nov. 5, 1981)

The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

Ilean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

HEARINGS--Continued

Where an applicant for a noncompetitive oil and gas lease submits probative evidence opposing the determination by the Geological Survey that certain lands are within the known geologic structure, a hearing will be ordered so that a complete record may be developed.

Daniel A. Engelhardt, 61 IBLA 65 (Dec. 31, 1981)

HOMESTEADS (ORDINARY)

(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldiers' Additional Homesteads, Stock-Raising Homesteads--if included in this Index.)

LANDS SUBJECT TO

An application to make homestead entry on land previously classified for selection by the State of Alaska is properly rejected.

Deborah Lovmaster, 52 IBLA 198 (Jan. 26, 1981)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

No rights of Indians are violated because public lands have been withdrawn from settlement and must be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976).

An application for an Indian allotment, filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) and (d) or the petition for classification required by 43 CFR 2531.2 may be rejected.

Roy M. Miller, Jr., 52 IBLA 52 (Jan. 6, 1981)

Applications for Indian allotments on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1, are properly rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

An appeal from a Bureau of Land Management decision suspending action on an Indian allotment application pending final action on a previously filed application for the same lands will be dismissed and the case remanded to BLM where the record shows that the previously filed application requesting the same land was, in fact, filed prior to appellant's application.

Applications for Indian allotments on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1, are properly rejected.

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO

The effect of the issuance of a patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Where BLM's records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Mary Patricia Anne Newman Gibson et al., 52 IBLA 216 (Jan. 30, 1981) 88 I.L. 244

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1950.

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

Jan Christian Sykes, 55 IBLA 23 (May 26, 1981)

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Samuel Lee Gifford et al. (On Reconsideration), 55 IBLA 1 (May 21, 1981)

Jimmy Lorn Gibson, 59 IBLA 170 (Oct. 26, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), for such lands, is properly rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been transferred from Federal ownership.

Avo B. Hart Hedrick, 55 IBLA 143 (June 4, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

Gladys Lee Cardwell Gifford, Betty Ann Gifford Jarman, 55 IBLA 332 (June 26, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the public land laws on Sept. 5, 1969, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

Terry Burl Fryrear, 58 IBLA 94 (Sept. 24, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

Marvin Coy Gifford et al., 58 IBLA 98 (Sept. 24, 1981)

Betsy Romaine Bevill, 58 IBLA 260 (Oct. 6, 1981)

William Milton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Laverd Jarman, 59 IBLA 182 (Oct. 27, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they were segregated from appropriation under the agricultural land laws on July 7, 1967, and Sept. 5, 1969, when the "Notice[s] of Classification of Public Lands for Multiple Use Management" were published in the Federal Register.

Don W. Hill, Sr., Lois Sallee Kelso Shrode, 58 IBLA 103 (Sept. 24, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the public land laws on July 7, 1967, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

Claire Inez Wood Swanner, 58 IBLA 108 (Sept. 24, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958, and selected by the State of Nevada pursuant to that Act.

Marvin Lee Stokes, 58 IBLA 199 (Sept. 29, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Lula Lorene McCracken Slowe, 58 IBLA 202 (Sept. 29, 1981)

INDIAN LANDS

(See also Exchanges of Land, Indian Probate, Rights-of-Way--if included in this Index.)

GENERALLY

Where the Bureau of Land Management (BLM) has offered lands for competitive oil and gas lease sale, and on appeal the high bidder presents evidence which raises a question concerning the feasibility by BLM of certain of those lands because of possible conflicting ownership problems between the United States and the Choctaw, Chickasaw, and Cherokee Indian Nations, the sale shall be voided and the high bidder's bonus bid deposit returned.

Samson Resource Co., 55 IBLA 51 (May 29, 1981)

ALLOTMENTS

Alienation

Where the owner of an Alaska Native allotment notified the Bureau of Indian Affairs that an agreement to alienate part of his allotment had been procured from him by fraud and that he revoked his consent to the use of his land for a road and pipeline by the State of Alaska, the Acting Area Director correctly declined to take action to grant an easement across the allotment to the State for a road and pipeline. Departmental regulations deny the agency authority to permit alienation of part of an Alaska Native allotment subject to restrictions against alienation where the allottee refuses to consent to the alienation, and there is no other provision of law requiring or permitting the alienation.

State of Alaska v. Juneau Area Acting Director, Bureau of Indian Affairs, and Arctic John Etalook, 9 IBIA 126 (Nov. 9, 1981) 88 I.D. 1020

CONTRACTS

Formation and ValidityGenerally

Menominee Tribal Enterprises, an organization characterized by the 1977 Menominee Constitution to be the principal business arm of the tribe, is an "Indian tribe or tribal council" within the meaning of 25 U.S.C. § 476 (1976) requiring that attorney contracts with Indian tribes must be approved by the Secretary. Since the Secretary approved a transitional scheme for reorganization of the tribal business organization in connection with the restoration of the Federal trust responsibility over the tribe, the Bureau of Indian Affairs is directed on remand to consider whether in this case Secretarial approval has not

INDIAN LANDS--Continued

CONTRACTS--Continued

Formation and Validity--ContinuedGenerally--Continued

already been obtained of the attorney contracts which are the subject of this appeal.

Menominee Tribal Enterprises v. Acting Deputy Comm'r of Indian Affairs, 9 IBIA 141 (Dec. 22, 1981)

GRAZING

Rental Rates

In ascertaining the reasonableness of a rental rate increase for grazing lands permitted under authority of 25 CFR Part 151, it was error for the Administrative Law Judge to conclude that "fair annual return" to which Indian landowners are entitled under the regulations is "something different and less than fair market value."

The independent market survey utilized by the Bureau of Indian Affairs in justifying an increase in grazing rental rates on the Fort Berthold Reservation cannot be regarded as invalid on grounds that off-reservation transactions were included in the survey.

In reviewing action of the Bureau of Indian Affairs in raising grazing rental rates, the Board of Indian Appeals should overturn the action only if it is found to be unreasonable. As long as the Bureau's action is supported in law and by substantial evidence, it would be an inappropriate intrusion into the Bureau's function for the Board to substitute its judgment for the agency's.

Fort Berthold Land and Livestock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 230 (Feb. 20, 1981) 88 I.D. 315

LEASES AND PERMITS

Minerals

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is further defined as the gross sales price at the mining site without any deduction therefrom of overhead sales costs or any other business expense, this royalty base includes the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 where the selling price is increased by that amount or where the seller is reimbursed for that amount by the buyer.

The rulemaking procedures in 5 U.S.C. § 553 (1976) do not apply to administrative interpretations which conclude that the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 is to be included as part of the royalty base under Indian coal leases.

Peabody Coal Co., 53 IBLA 261 (Mar. 23, 1981)

Oil and Gas

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance;

INDIAN LANDS--ContinuedLEASES AND PERMITS--ContinuedOil and Gas--Continued

nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

An appellant who challenges a determination by the Geological Survey as to the value of gas or other hydrocarbons produced from a Federal oil and gas lease must show not merely that the methodology utilized by Geological Survey is susceptible to error; it must show that error did, in fact, occur.

An Area Supervisor's order which requires that royalty be based on either the price specified in the order or the amount actually received, whichever is greater, comports with all regulatory requirements as to definitiveness and finality.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

Revocation or Cancellation

A Departmental official may change a decision regarding cancellation of a lease of Indian lands as long as the reason for the change is clearly set forth in order to show that the departure from the prior administrative position is not arbitrary or capricious.

A business lease on Indian lands may not be canceled on the grounds that the business was not continuously open when the lease does not require the business to operate for a specified period.

A business lease on Indian lands may not be canceled on the grounds that the leasehold was also being used for residential purposes when the lease does not specifically prohibit this use and it is shown that the business requires continual protection against vandalism and robbery and the residence does not interfere with the operation of the business.

Isaac and Katherine Bonaparte v. Comm'r of Indian Affairs, 9 IBIA 115 (Nov. 6, 1981)

MINING LEASESGenerally

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is further defined as the gross sales price at the mining site without any deduction therefrom of overhead sales costs or any other business expense, this royalty base includes the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 where the selling price is increased by that amount or where the seller is reimbursed for that amount by the buyer.

The rulemaking procedures in 5 U.S.C. § 553 (1976) do not apply to administrative interpretations which conclude that the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 is to be included as part of the royalty base under Indian coal leases.

Peabody Coal Co., 53 IBLA 261 (Mar. 23, 1981)

INDIAN LANDS--ContinuedOIL AND GAS LEASINGGenerally

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

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Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

PATENT IN FEEJurisdiction

The Federal trust responsibility over allotted land or any fractional share thereof is extinguished as to that interest immediately upon its acquisition by a non-Indian. The ministerial issuance of a fee patent serves only a recordkeeping function and is without legal significance in respect to dissolution of the Department's role as trustee.

The Department of the Interior owes no fiduciary duties of any kind to a non-Indian who has acquired an interest in allotted trust land.

Estate of Dana A. Knight, 9 IBIA 82 (Oct. 22, 1981)
88 I.D. 987

TRIBAL LANDS

Tribal land may not be alienated unless authorized by Congress. A tribal member's request to exchange land for tribal land on the Fort Peck Reservation acquired under the Submarginal Land Act of 1975, 89 Stat. 577, was properly denied by the Bureau of Indian Affairs in the absence of statutory authority permitting the exchange of such submarginal lands.

Alfred Manning v. Commissioner of Indian Affairs, 9 IBIA 36 (July 10, 1981)

TRIBAL RIGHTS IN ALLOTTED LANDS

Where record indicates husband, who would otherwise have received trust property of deceased wife located on Yakima Reservation, did not timely receive notice of tribal determination to purchase inherited trust interest and where the notice and the appraisal relied upon by tribe for the valuation set out in the notice did not conform to requirements of Departmental regulation, a hearing on valuation is required although the time during which a demand for hearing should have been made had expired.

Estate of Angeline LaBelle Solis, 8 IBIA 312 (May 29, 1981)

INDIAN PROBATE

(See also Appeals, Bureau of Indian Affairs, Hearings, Indian Lands, Indian Tribes, Rules of Practice--if included in this Index.)

ADOPTION (See also CHILDREN, ADOPTED--if included in this Index.)

Generally

The Act of July 8, 1940, 54 Stat. 746 (25 U.S.C. § 372a (1976)) gave limited authority to agency superintendents over the adoption of Indian children. Evaluated in light of its legislative history, the Act must be read as allowing superintendents to validate adoptions agreed to in writing by Indian parties as well as Indian custom adoptions.

The Act of Mar. 3, 1931, 46 Stat. 1494, relating to the adoption of Indian children on the Crow Reservation in Montana, vested the superintendent of the Crow Agency with adoption authority which served as a model in the draftsmanship of the Act of July 8, 1940.

Estate of Victor Young Bear (Supp.), 8 IBIA 254
(Mar. 26, 1981) 88 I.D. 410

Crow Tribe

The Act of Mar. 3, 1931, 46 Stat. 1494, relating to the adoption of Indian children on the Crow Reservation in Montana, vested the superintendent of the Crow Agency with adoption authority which served as a model in the draftsmanship of the Act of July 8, 1940.

Estate of Victor Young Bear (Supp.), 8 IBIA 254
(Mar. 26, 1981) 88 I.D. 410

ATTORNEYS AT LAWFees

Attorneys fees are allowable as a charge against the administration of the estate based upon the record showing that work expended, complexity of issues presented and situation of successful party justified the fee billed in accordance with Departmental regulation.

Estate of Howard Good Elk (or Pacer), 9 IBIA 38
(July 20, 1981)

CHILDREN, ILLEGITIMATE (See also INHERITING--if included in this Index.)

Right to InheritChild from Father

Under 25 U.S.C. § 371 (1976), an otherwise illegitimate child can inherit from the person shown to be her father.

Estate of Robert R. Monroe, 9 IBIA 67 (Sept. 3, 1981)

DIVORCE (See also CLAIM AGAINST ESTATE--if included in this Index.)

Indian Custom

The Cheyenne-Arapaho Indian Tribe of Oklahoma discontinued recognizing Indian custom marriages and divorces by adoption of an ordinance approved by the Secretary of the Interior on Feb. 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with each tribe as an

INDIAN PROBATE--Continued

DIVORCE (See also CLAIM AGAINST ESTATE--if included in this Index.)--Continued

Indian Custom--Continued

incident of its sovereignty, and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates.

Estate of Mark Turtle, Sr., 8 IBIA 272 (Apr. 15, 1981)

Estate of Thomas Edward Lumpmouth, 8 IBIA 275
(Apr. 15, 1981)

Where no evidence was received at probate hearing to show the customs of any Indian tribe concerning regulation of the domestic relations of members of the tribe, a ruling by an Indian probate Administrative Law Judge that he could officially notice the existence of divorce by Yakima tribal custom was error. Since no evidence was offered to show that decedent, who was of Nez Perce and Yakima ancestry, and appellee, of Alaskan Native descent, lived in tribal relations under the jurisdiction of the Yakima tribe, it was error to conclude they were nonetheless married in accordance with Yakima customary law.

Estate of Matthew Cook, 9 IBIA 52 (July 29, 1981)
88 I.D. 676

EVIDENCEInsufficiency of

Where testimony at hearing established that testatrix was aged, had poor eyesight, and had lost the power of speech following a stroke, the testimony was insufficient to establish that she lacked testamentary capacity or had made her will under the undue influence of another, where the witnesses to the will testified she knew objects of her bounty, the extent of her property, and the distribution she desired to make of her trust property.

Estate of Jane Eckiwadab, a.k.a. Emma Chahsenah, 9 IBIA 112 (Oct. 30, 1981)

INDIAN REORGANIZATION ACT of June 18, 1934
(Wheeler-Howard Act) (25 U.S.C. §§ 464-486)

Construction of Section 4

Jurisdiction of Indian tribe over Quinault Reservation where estate trust property was located being material to a decision concerning the eligibility of a devisee to take property under an Indian will, it was error to hold that the General Allotment Act conferred jurisdiction over the reservation upon the tribes of persons allotted on the reservation without regard to the historical development of the reservation and the actual implementation of the treaty rights of the tribes concerned. The record demonstrates that since acceptance of the Indian Reorganization Act of 1934 (IRA) the Quinault Tribe exercised exclusive jurisdiction over the Quinault Reservation, and that the Quilleute Tribe (one of the tribes whose hereditary members accepted Quinault allotments) had earlier elected to forego any treaty rights it may have claimed in the Quinault Reservation in order to retain its ancestral village at LaPush. The record establishes jurisdiction over the Quinault Reservation to be in the Quinault Tribe, an IRA tribe.

Sec. 4 of the Indian Reorganization Act of 1934 prior to amendment in 1980 did not permit devises of

INDIAN PROBATE--Continued

INDIAN REORGANIZATION ACT of June 18, 1934
(Wheeler-Howard Act) (25 U.S.C. §§ 464-486)--Continued

Construction of Section 4--Continued

trust property found on reservations subject to the Act to persons who were neither heirs of the decedent allottee nor members of the tribe having jurisdiction over the reservation where the trust land is located. Thus, since appellee was neither a member of the Quinault Tribe nor an heir of decedent, he was barred from taking trust property on the Quinault Reservation under the decedent's will.

Estate of Joseph Willessi, 8 IBIA 295 (May 28, 1981)
88 I.D. 561

KLAMATH TRIBE

While it is true that the Klamath Termination Act, Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered inapplicable to Klamath tribal members the Secretary's usual jurisdiction over Indian heirship determinations as set forth in 25 U.S.C. §§ 372-373 (1976) (see 25 U.S.C. § 564h), Congress, by the more recent Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), specifically empowered the Secretary of the Interior to determine the rightful heirs of deceased Klamath enrollees entitled to a share of judgment funds payable from the United States for the limited purpose of seeing that such funds are distributed to the heir or heirs so determined.

The Secretary has no statutory authority to pay creditors' claims against estates of deceased Klamath Indians out of judgment funds distributable by the Secretary under the Act of Oct. 1, 1965, 79 Stat. 897.

Gertrude E. Sherman v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 25 (June 29, 1981) 88 I.D. 619

Although the Klamath Termination Act of Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered the Secretary's usual probate jurisdiction inapplicable to Klamath Indians, the Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), gave the Secretary limited jurisdiction to determine the heirs of deceased Klamath enrollees pursuant to his duty to distribute judgment funds.

Yvonne Weiser et al. v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 76 (Sept. 29, 1981)

MARRIAGE

Generally

The Cheyenne-Arapaho Indian Tribe of Oklahoma discontinued recognizing Indian custom marriages and divorces by adoption of an ordinance approved by the Secretary of the Interior on Feb. 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with each tribe as an incident of its sovereignty, and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates.

Estate of Mark Turtle, Sr., 8 IBIA 272 (Apr. 15, 1981)

Estate of Thomas Elward Lumpnouth, 8 IBIA 275 (Apr. 15, 1981)

INDIAN PROBATE--Continued

MARRIAGE--Continued

Common Law and Indian Custom Distinguished

A holding that decedent and appellee were married by operation of tribal custom based upon a conclusion that the birth of nine children to the couple required a finding they were married was erroneous where the record affirmatively showed decedent was married to another woman at the time of his cohabitation with appellee.

Estate of Matthew Cook, 9 IBIA 52 (July 29, 1981)
88 I.D. 676

REHEARING (See also ADMINISTRATIVE PROCEDURE, HEARING--if included in this Index.)

Generally

A petition for rehearing deficient under provisions of 43 CFR 4.241 in that it was not made under oath and did not state grounds upon which it was based was properly denied by the Administrative Law Judge. The petition for rehearing which failed to conform to regulatory requirements and also failed to show probable error, was properly denied.

Estate of John Bear Shield, 9 IBIA 1 (June 5, 1981)

REOPENING

Generally

Where appellant niece of decedent petitioned to reopen estate to offer proof of inconsistent statements by decedent's former wife concerning the paternity of appellee who had earlier been found to be a surviving child of decedent's marriage to appellee's mother, the petition was insufficient to support an order to reopen since, assuming the offered evidence to have been admitted, it would not have changed the result in the heirship determination.

Estate of Howard Good Elk (or Pacer), 9 IBIA 38 (July 20, 1981)

Where appellant, brother of decedent, petitioned to reopen in conjunction with petition of another interested party and conditioned his appeal from the order denying reopening upon the same grounds as the other party, his appeal must succeed or fail for the same reasons as the appeal of the principal appellant. Since the co-appellant was unable to establish that the offered proof which was the basis of her petition would change the result of the decision below, reopening is not justified under existing Departmental regulations.

Estate of Howard Good Elk (or Pacer), 9 IBIA 41 (July 20, 1981)

Standing to Petition for Reopening

Where agency superintendent charged with administration of Indian trust estate petitioned to reopen estate to correct erroneous heirship determination 4 years after a final order of distribution had been made, reopening was properly ordered pursuant to 43 CFR 4.242 where the record affirmatively showed the initial heirship determination was erroneous, the 4-year delay in discovery of the error was explained, and correction of the error was administratively feasible.

Estate of Walter George and Minnie Racehorse George Snipe, 9 IBIA 20 (June 12, 1981)

INDIAN PROBATE--ContinuedREOPENING--ContinuedWaiver of Time Limitation

Where agency superintendent charged with administration of Indian trust estate petitioned to reopen estate to correct erroneous heirship determination 4 years after a final order of distribution had been made, reopening was properly ordered pursuant to 43 CFR 4.242 where the record affirmatively showed the initial heirship determination was erroneous, the 4-year delay in discovery of the error was explained, and correction of the error was administratively feasible.

Estate of Walter George and Minnie Racehorse George Snipe, 9 IBIA 20 (June 12, 1981)

TRIBAL PURCHASE OF INTEREST IN DECEDENT'S ESTATE

Where record indicates husband, who would otherwise have received trust property of deceased wife located on Yakima Reservation, did not timely receive notice of tribal determination to purchase inherited trust interest and where the notice and the appraisal relied upon by tribe for the valuation set out in the notice did not conform to requirements of Departmental regulation, a hearing on valuation is required although the time during which a demand for hearing should have been made had expired.

Estate of Angeline LaBelle Solis, 8 IBIA 312 (May 29, 1981)

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)

Children, Disinheritance of

Indian testator's statement that he was a single man having no children was not proof of an insane delusion so as to invalidate his Indian will where decedent had often denied paternity of appellant children and refused support and where the witnesses to the will agreed that testator was competent, knew the nature and extent of his property, and had dictated the terms of the will according to his own expressed desires.

Estate of William Mason Cultee, 9 IBIA 43 (July 27, 1981)

Construction of

Jurisdiction of Indian tribe over Quinault Reservation where estate trust property was located being material to a decision concerning the eligibility of a devisee to take property under an Indian will, it was error to hold that the General Allotment Act conferred jurisdiction over the reservation upon the tribes of persons allotted on the reservation without regard to the historical development of the reservation and the actual implementation of the treaty rights of the tribes concerned. The record demonstrates that since acceptance of the Indian Reorganization Act of 1934 (IRA) the Quinault Tribe exercised exclusive jurisdiction over the Quinault Reservation, and that the Quileute Tribe (one of the tribes whose hereditary members accepted Quinault allotments) had earlier elected to forego any treaty rights it may have claimed in the Quinault Reservation in order to retain its ancestral village at LaPush. The record establishes jurisdiction over the Quinault Reservation to be in the Quinault Tribe, an IRA tribe.

Sec. 4 of the Indian Reorganization Act of 1934 prior to amendment in 1980 did not permit devises of trust property found on reservations subject to the Act to persons who were neither heirs of the decedent

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Construction of--Continued

allottee nor members of the tribe having jurisdiction over the reservation where the trust land is located. Thus, since appellee was neither a member of the Quinault Tribe nor an heir of decedent, he was barred from taking trust property on the Quinault Reservation under the decedent's will.

Estate of Joseph Willessi, 8 IBIA 295 (May 28, 1981)
88 I.D. 561

Disapproval of Will

Under the Supreme Court's holding in Tcoahpiffah v. Hickel, 397 U.S. 598 (1970), the Department may not revoke or rewrite an otherwise valid will disposing of Indian trust or restricted property that reflects a rational testamentary scheme simply because the disposition does not comport with the deciding official's conception of equity and fairness.

Estate of Ronald Richard Saubel, 9 IBIA 94 (Oct. 28, 1981)
88 I.D. 993

Failure to Mention Child

A Bureau of Indian Affairs instruction to will drafters which requires children to be mentioned in wills prepared by the agency is merely an administrative guide, and is not binding upon a testator who wishes to ignore the instruction or disinherit his children.

Estate of William Mason Cultee, 9 IBIA 43 (July 27, 1981)

The failure of decedent's will to provide for two after-born children is insufficient to render the dispositive scheme irrational.

Estate of Ronald Richard Saubel, 9 IBIA 94 (Oct. 28, 1981)
88 I.D. 993

Mistake of Fact or Law

Indian testator's statement that he was a single man having no children was not proof of an insane delusion so as to invalidate his Indian will where decedent had often denied paternity of appellant children and refused support and where the witnesses to the will agreed that testator was competent, knew the nature and extent of his property, and had dictated the terms of the will according to his own expressed desires.

Estate of William Mason Cultee, 9 IBIA 43 (July 27, 1981)

Testamentary CapacityGenerally

Where testimony at hearing established that testatrix was aged, had poor eyesight, and had lost the power of speech following a stroke, the testimony was insufficient to establish that she lacked testamentary capacity or had made her will under the undue influence of another, where the witnesses to the will testified

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Testamentary Capacity--ContinuedGenerally--Continued

she knew objects of her bounty, the extent of her property, and the distribution she desired to make of her trust property.

Estate of Jane Eckiwaudah, a.k.a. Emma Chahsenah, 9 IBIA 112 (Oct. 30, 1981)

Alcohol

Evidence tending to show that decedent was given to periodic excessive drinking which affected a chronic heart ailment is insufficient to show that his competence to execute a valid will was affected, where testimony of witnesses establishes he was otherwise competent to manage his affairs, was a prudent money manager and concerned about the devolution of his trust property.

Estate of William Mason Cultee, 9 IBIA 43 (July 27, 1981)

Witnesses' Testimony

Where the agency attorney who prepared decedent's will testified he took special notice of decedent's appearance and behavior because he knew decedent was dying, his uncontradicted observations concerning decedent, together with testimony concerning the circumstances of the will execution from the witnesses to the will and the interpreters present indicate decedent was competent to make a will and was not acting under duress. The fact that decedent's cousins were each left \$1 under the will, while the bulk of the estate was devised to a nonrelative was not, under the circumstances, an indication that undue influence was sought to be exerted upon decedent by the principal beneficiary of his will.

Where decedent's cousins, his nearest relatives, contested his will claiming decedent was the victim of undue influence practiced by the principal beneficiary of his will, their testimony that, at unspecified times prior to executing his will, decedent complained that others, including the principal beneficiary, wanted his trust property, was, under the circumstances, insufficient to show that an attempt was made to exert undue influence upon decedent. Moreover, there was no showing that decedent was susceptible to influence by anyone, nor was there proof of circumstances surrounding the will execution to suggest the will of decedent was coerced. In the absence of a showing of the successful imposition of the will of another for that of the testator, his will was properly approved.

Estate of Homer James Medicinebird, 8 IBIA 289 (May 21, 1981)

Evidence tending to show that decedent was given to periodic excessive drinking which affected a chronic heart ailment is insufficient to show that his competence to execute a valid will was affected, where testimony of witnesses establishes he was otherwise competent to manage his affairs, was a prudent money manager and concerned about the devolution of his trust property.

Estate of William Mason Cultee, 9 IBIA 43 (July 27, 1981)

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Undue Influence

Evidence tending to show that appellee attempted to control decedent's drinking habits, provided him with a place to stay, and gave him some assistance in dealings with the Bureau of Indian Affairs is insufficient to establish an attempt by appellee to exert undue influence upon decedent in order to obtain a devise of his trust property. An inference of undue influence is not available to persons contesting Indian wills; to establish undue influence in Indian probate matters, the misconduct sought to be established must be proved.

Estate of William Mason Cultee, 9 IBIA 43 (July 27, 1981)

Where testimony at hearing established that testatrix was aged, had poor eyesight, and had lost the power of speech following a stroke, the testimony was insufficient to establish that she lacked testamentary capacity or had made her will under the undue influence of another, where the witnesses to the will testified she knew objects of her bounty, the extent of her property, and the distribution she desired to make of her trust property.

Estate of Jane Eckiwaudah, a.k.a. Emma Chahsenah, 9 IBIA 112 (Oct. 30, 1981)

Unnatural Will

A Bureau of Indian Affairs instruction to will drafters which requires children to be mentioned in wills prepared by the agency is merely an administrative guide, and is not binding upon a testator who wishes to ignore the instruction or disinherit his children.

Estate of William Mason Cultee, 9 IBIA 43 (July 27, 1981)

INDIAN TRIBES

(See also Appeals, Indian Probate--if included in this Index.)

GENERALLY

Tribal land may not be alienated unless authorized by Congress. A tribal member's request to exchange land for trital land on the Fort Peck Reservation acquired under the Submarginal Land Act of 1975, 89 Stat. 577, was properly denied by the Bureau of Indian Affairs in the absence of statutory authority permitting the exchange of such submarginal lands.

Alfred Manning v. Commissioner of Indian Affairs, 9 IBIA 36 (July 10, 1981)

ALASKAN GROUPS

The provisions of the Alaska Native Claims Settlement Act defining the class of persons entitled to share in benefits under the Act are not ambiguous so as to require reference to the legislative history to determine whether persons becoming United States citizens after Dec. 18, 1971, the effective date of the Act, are entitled to be enrolled.

United States v. Aimee Marion Bowen (Edenshaw) and Phyllis Josephine Kimball, 8 IBIA 218 (Feb. 12, 1981)
88 I.D. 261

INDIAN TRIBES--Continued

ALASKAN GROUPS--Continued

The provisions of the Alaska Native Claims Settlement Act specifically exclude members of the Metlakatla Tribe of the Annette Islands Reserve from benefits under the Act. Where appellant and her children periodically resided at Metlakatla, accepted benefits from the Metlakatla Tribe as tribal members, were enrolled members since 1968, and did not initiate efforts to terminate tribal membership until 1974, appellants were enrolled members of Metlakatla within the meaning of the Alaska Native Claims Settlement Act and were properly excluded from enrollment under the Act.

Corinne Mae Howell & Her Minor Children, Gary Arnold Howell, Richard Dewayne Howell, and Darcy Lynn Howell v. United States, 9 IBIA 3 (June 11, 1981) 88 I.D. 575

Exclusion of appellant members of the Metlakatla Community from benefits under provisions of the Alaska Native Claims Settlement Act held not to be precluded by a contrary result reached in a prior Administrative Law Judge's decision in a similar case. The determination by the agency factfinder in the separate but similar situation is not binding upon the Board of Indian Appeals, which renders final decision for the Department in disenrollment appeals referred on appeal to the Board.

Corinne Mae Howell & Her Minor Children Gary Arnold Howell, Richard Dewayne Howell, and Darcy Lynn Howell v. United States, 9 IBIA 70 (Sept. 9, 1981) 88 I.D. 822

FEDERAL RECOGNITION

Only those groups which have received Federal acknowledgement of their Indian tribal status constitute Indian tribes, for purposes of sec. 2 of the Bald Eagle Protection Act.

Indian Tribal Status under the Bald Eagle Protection Act, M-36934 (Feb. 26, 1981) 88 I.D. 338

HUNTING AND FISHING

Generally

The prohibitions of the Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act are non-discriminatory, reasonable and necessary conservation measures to which reserved Indian hunting rights are subject.

Application of Eagle Protection and Migratory Bird Treaty Acts to Reserved Indian Hunting Rights, M-36936 (June 15, 1981) 88 I.D. 586

JUDGMENT FUNDS

While it is true that the Klamath Termination Act, Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered inapplicable to Klamath tribal members the Secretary's usual jurisdiction over Indian heirship determinations as set forth in 25 U.S.C. §§ 372-373 (1976) (see 25 U.S.C. § 564h), Congress, by the more recent Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), specifically empowered the Secretary of the Interior to determine the rightful heirs of deceased Klamath enrollees entitled to a share of judgment funds payable from the United States

INDIAN TRIBES--Continued

JUDGMENT FUNDS--Continued

for the limited purpose of seeing that such funds are distributed to the heir or heirs so determined.

Gertrude E. Sherman v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 25 (June 29, 1981) 88 I.D. 619

Although the Klamath Termination Act of Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered the Secretary's usual probate jurisdiction inapplicable to Klamath Indians, the Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), gave the Secretary limited jurisdiction to determine the heirs of deceased Klamath enrollees pursuant to his duty to distribute judgment funds.

Yvonne Weiser et al. v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 76 (Sept. 29, 1981)

SOVEREIGN POWERS

The Cheyenne-Arapaho Indian Tribe of Oklahoma discontinued recognizing Indian custom marriages and divorces by adoption of an ordinance approved by the Secretary of the Interior on Feb. 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with each tribe as an incident of its sovereignty, and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates.

Estate of Mark Turtle, Sr., 8 IBIA 272 (Apr. 15, 1981)

Estate of Thomas Elward Lumpmough, 8 IBIA 275 (Apr. 15, 1981)

INDIANS

CRIMINAL JURISDICTION

Six parcels of Bureau of Indian Affairs school land adjoining land held in trust for the Mississippi Band of Choctaw Indians are Indian country within the meaning of 18 U.S.C. § 1151(b) (1976).

Indian Country Status of Mississippi Choctaw School Lands, M-36933 (Jan. 19, 1981) 88 I.D. 333

DOMESTIC RELATIONS

The Cheyenne-Arapaho Indian Tribe of Oklahoma discontinued recognizing Indian custom marriages and divorces by adoption of an ordinance approved by the Secretary of the Interior on Feb. 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with each tribe as an incident of its sovereignty, and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates.

Estate of Mark Turtle, Sr., 8 IBIA 272 (Apr. 15, 1981)

Estate of Thomas Elward Lumpmough, 8 IBIA 275 (Apr. 15, 1981)

INDIANS--ContinuedLAW AND ORDER

Only reservations listed in 25 CFR 11.1(a) are governed by the law and order provisions codified in secs. 11.1 through 11.87 of 25 CFR Part 11. Because the Blackfeet Reservation is not listed thereunder, the Blackfeet Tribe may remove a tribal judge from its tribal court without regard to the procedural requirements found at 25 CFR 11.4.

The fact that judges of the Blackfeet Tribal Court, which is not a CFR court, are financed in part by Federal funds, does not render such judges subject to the law and order regulations found at 25 CFR 11.1(d) and 25 CFR 11.4. The Blackfeet Tribe has its own ordinance governing the removal of judges, which has been approved by the Secretary, and such ordinance is exclusively controlling in such matters.

Lenore Salois v. Area Director, Billings Area Office,
8 IBLA 283 (May 15, 1981)

LACHES

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976).

Southern Pacific Transportation Co., B. K. Herndon,
54 IBLA 174 (Apr. 21, 1981)

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA
318 (June 26, 1981)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Simon A. Rife, 56 IBLA 378 (Aug. 3, 1981)

James N. Tibbals, Janet D. Tibbals, 58 IBLA 42
(Sept. 17, 1981)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost through lack of enforcement by some of its officers.

Clyde K. Kobbeman, 58 IBLA 268 (Oct. 8, 1981)
88 I.D. 915

Janet A. Rodgers, 58 IBLA 275 (Oct. 8, 1981)

LOWER COLORADO RIVER LAND USE

A determination by an Assistant Secretary of the Interior that the increased potential for flooding of

LOWER COLORADO RIVER LAND USE--Continued

the public lands in the Lower Colorado River Land Use Area requires termination of residential permits issued for land in the flood plain is not appealable to the Office of Hearings and Appeals.

Decisions by the Yuma District Office, Bureau of Land Management, not to renew residential permits in the flood plain of the Lower Colorado River, consonant with a determination by an Assistant Secretary, will be affirmed where it is not shown that any rights of the permittees under applicable regulations have been abridged.

Clarence C. Ore et al., 4 OHA 125 (Feb. 24, 1981)

Mr. & Mrs. Adron J. Chastain, Mr. and Mrs. T. O. Davis, Sr., 4 OHA 134 (Mar. 24, 1981)

MILLSITES

(See also Mining Claims--if included in this Index.)

GENERALLY

Under 43 CFR 3833.2-1(d), a millsite owner is not required to file a notice of intention to hold the site until Dec. 30 of the year following the year in which the owner files the notice of location for the site with BLM for recordation. A BLM decision declaring six millsite claims abandoned and void because notices of intention to hold, filed at the same time as the notices of location for the sites, are defective will be reversed.

Louis L. Osner, Jr., et al., 56 IBLA 30 (July 8, 1981)

A decision by the Bureau of Land Management that unpatented millsite claims are abandoned and void because no notice of intent to hold was filed with the recorded notice of location will be reversed. There is no requirement either in the statute or regulations for such filing.

Ronald Cole, 56 IBLA 131 (July 16, 1981)

CYPRUS Mines Corp., 56 IBLA 160 (July 20, 1981)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Harlow B. Oberbillig, 57 IBLA 336 (Sept. 1, 1981)

The failure to file a copy of a notice or certificate of location for a millsite as required by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2 in the proper Bureau of Land Management office within the time period prescribed therein conclusively constitutes abandonment of the millsite by the owner.

Fletcher D. Fisher, 59 IBLA 150 (Oct. 26, 1981)

DEPENDENT

Where a dependent millsite is allegedly operated only in connection with a lode mining claim which is

MILLSITES--Continued

DEPENDENT--Continued

invalid, it necessarily follows that the millsite is invalid.

United States v. Michael Kurelich et al., 54 IBLA 124 (Apr. 17, 1981)

DETERMINATION OF VALIDITY

Where a millsite is located in conjunction with certain mining claims which are not producing, and the millsite has never been used or improved for any purpose associated with mining, the mere presence of water on the millsite which could be used for mining or milling in the event such activities should transpire is not sufficient to support a finding that the millsite claim is valid.

United States v. Lyle E. and Diane Campbell, 59 IBLA 261 (Oct. 29, 1981)

MINERAL LANDS

DETERMINATION OF CHARACTER OF

Where a Native allotment application filed in 1961 is rejected, more than 13 years after applicant has submitted acceptable evidence of his use and occupancy of the land for more than the required 5-year period set out in the appropriate statute, solely on the basis of a Geological Survey report in 1974 that the land was believed to be prospectively valuable for phosphate, the decision rejecting the application will be set aside and the matter remanded to BLM to proceed to issuance of patent as land must be considered to be nonmineral in character absent a showing that minerals are present in such quantities and such qualities as would induce a person of ordinary prudence to expend time and money with a reasonable prospect of success in developing a paying mine thereon.

Heirs of Simon Paneak, 55 IBLA 305 (June 25, 1981)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

It is unnecessary to demonstrate the workability of a mineral deposit by an actual physical examination of the deposit in the land sought by means of drilling or actual exploratory work on the ground. Competent evidence to establish the fact that exploration is unnecessary to determine the existence or workability of a phosphate deposit may consist of proof of the existence of minerals in adjacent lands and of geological and other surrounding external conditions.

Christian F. Murer, 57 IBLA 333 (Sept. 1, 1981)

LEASES

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as

MINERAL LANDS--Continued

LEASES--Continued

long as the permit is in force, the appropriation of land therein included under the mining laws.

United States v. Ernest Higbee et al., 52 IFLA 83 (Jan. 9, 1981)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981)

MINERAL RESERVATION

Where land is conveyed pursuant to the Stock Raising Homestead Act, 43 U.S.C. § 299 (1976), reserving to the United States all minerals therein, and thereafter the land is reconveyed to the United States, it is error for BLM to reject an offer to lease for oil and gas on the basis that the United States does not own the minerals therein.

A decision to reject a noncompetitive oil and gas lease offer on the grounds that the United States does not own the oil and gas interest will be vacated where the record shows that the subject lands were patented by the State of Utah after passage of secs. 5575x and 5575xl, Ch. 107, Laws of Utah (May 12, 1919), requiring the State to reserve all coal and minerals in lands thereafter conveyed, but where the record is silent as to whether an application to purchase had been approved by the State of Utah prior to passage of secs. 5575x and 5575xl on May 12, 1919.

Douglas H. Willson et al., 52 IBLA 390 (Feb. 24, 1981)

The effect of a notation on a document stating that in a conveyance to the State of Wyoming "all petroleum" was reserved to the United States is overcome by evidence of more authoritative records establishing that petroleum was not reserved, and that such a reservation would have been contrary to the statute which conditioned the conveyance under the prevailing circumstances, so that an oil and gas lease offer for the purported reserved petroleum was properly rejected.

Charles H. Whitlock, 57 IBLA 252 (Aug. 28, 1981)

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1976), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and

MINERAL LANDS--Continued

MINERAL RESERVATION--Continued

which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976). However, in a case where scoria is used no differently from common earth, the record must demonstrate that the deposit of scoria has commercial value independent of such use.

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

PROSPECTING PERMITS

Lands acquired by the Forest Service pursuant to the General Exchange Act of 1922 and the Federal Land Policy and Management Act of 1976 have the status of public lands and are not subject to uranium prospecting permits under the Mineral Leasing Act for Acquired Lands, but such lands are subject to location and entry under the general mining law and to leasing under the Mineral Leasing Act of 1920.

Wyoming Fuel Co., 52 IBLA 302 (Feb. 10, 1981)

An applicant for a prospecting permit on acquired forest lands must execute any special stipulations required by the Department of Agriculture as a condition precedent to the issuance of the permit, or suffer rejection of the offer.

John W. Jewell, 53 IBLA 179 (Mar. 16, 1981)

The Secretary of the Interior has no authority to approve a hardrock mineral prospecting permit application for lands in the Mantahala National Forest which were originally acquired by the Tennessee Valley Authority and later transferred to the jurisdiction of the Forest Service, Department of Agriculture, by interagency agreement.

Joseph E. Worthington, 54 IBLA 162 (Apr. 21, 1981)

Where, pursuant to 43 CFR Part 3510, BLM grants a 2-year permit for hardrock mineral prospecting on certain acquired national forest lands with the concurrence of the Forest Service and Geological Survey, and thereafter fails to approve the permittee's operating plan during the term of the permit and a 2-year extension, the permit will be considered to have been suspended during that period and the permittee granted a 2-year term for prospecting with the right to apply for an extension as provided by the regulations.

Leroy Pedersen, 56 IBLA 86 (July 15, 1981)

88 I.D. 646

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981)

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

BLM may not properly require an applicant for a hardrock prospecting permit to execute a stipulation that a lease will be issued only upon a showing of a valuable mineral deposit, as a condition precedent to issuance of the permit, where the Secretary has declared that such a standard is not applicable to prospecting permits issued pursuant to sec. 402 of Reorganization Plan No. 3, 60 Stat. 1099.

Amex Exploration, Inc., 58 IBLA 312 (Oct. 16, 1981)

MINERAL LEASING ACT

(See also Bureau of Land Management, Coal Leases & Permits, Geothermal Leases, Oil & Gas Leases, Phosphate Leases & Permits, Potassium Leases & Permits, Sodium Leases & Permits--if included in this Index.)

GENERALLY

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981)

APPLICABILITY

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

Although Congress revised the provision governing readjustment of federal coal leases in 1976, the deletion of the clause "unless otherwise provided by law at the time of expiration of such periods" from sec. 7 of the MLA (30 U.S.C. § 207) did not alter the Secretary's obligation not to establish any lease terms contrary to law in readjusting a coal lease.

The legislative history of sec. 6 of the Federal Coal Leasing Amendments Act shows that the revision of sec. 7 of the MLA (30 U.S.C. § 207) was not retroactive, but applied to new leases and to "old" leases upon readjustment. The ten-year production period and revised royalty rates of amended sec. 7 must be imposed on "old" coal leases at readjustment. The legislative history to the 1978 coal leasing revisions (Act of Oct. 30,

MINERAL LEASING ACT--Continued

APPLICABILITY--Continued

1978) discloses that Congress understood and acted on the assumption that the amended sec. 7 royalty rates did apply to all "old" leases upon readjustment.

Whether Leases Issued Prior to August 4, 1976, Subject to Readjustment after that Date must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, M-36939 (Sept. 17, 1981) 88 I.D. 1003

LANDS SUBJECT TO

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-263 (1976).

Nova L. Dodgen, 54 IBLA 340 (May 7, 1981)

Lands situated within the borders of incorporated cities and towns are excluded from leasing by the express terms of sec. 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976).

Potts Stephenson Exploration Co., 60 IBLA 397 (Dec. 28, 1981)

METHODS OF DEVELOPMENT

The MLA refers only to "gas" or "natural gas" without any qualifying adjectives, thus supporting a nonrestrictive reading of those terms to include coalbed gas. Coalbed gas is leasable under the oil and gas leasing provision of the MLA, 30 U.S.C. § 226 (1976).

Coalbed gas is not included in a coal lease under the MLA. In the coal leasing provision of the MLA, Congress did not provide for a coal lessee's extraction of minerals related to or associated with coal. 30 U.S.C. § 201 (Supp. II 1978). This provision does not authorize a coal lessee's extraction of coalbed gas, other than the venting of the gas required by mine health and safety laws and regulations.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981) 88 I.D. 538

ROYALTIES

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed under sodium leases must be imposed on the "gross value of the sodium compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market even when applied to an intermediate product and without deduction for the cost that would be incurred in producing a refined product.

Sales commissions are not an allowable deduction in the computation of royalty under sodium leases.

The Government is not estopped from requiring the recalculation of royalty payments, even if it has accepted improper payments in the past.

FMC Corp., 54 IBLA 77 (Apr. 14, 1981)

MINERAL LEASING ACT--Continued

ROYALTIES--Continued

Sales commissions are not an allowable deduction in the computation of royalty under sodium leases.

To the extent that a commission is granted to distributors or jobbers who purchase soda ash for resale, such a discount represents an allowable deduction from the royalty base; however, where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product and reimburses the second company on the basis of the "net sales proceeds" received by the first company minus a retained commission, the first company cannot be considered a distributor for resale so as to allow the retained commission to be deducted from the royalty base. In such a situation the retained commission is properly characterized as a sales commission and not deductible.

In computing royalty under sodium leases where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product, if the first company buys the soda ash for consumption at its own plants, it cannot use an unpublished preferential sales price in determining the amount owed the second company. The second company is properly required to pay royalties on the basis of the published delivered prices paid by the first company's customers less the customary rail freight equalization allowances.

In computing royalty under sodium leases where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product, exchange agreement billings by the first company, which amount to discounts, understate the gross value of the soda ash for royalty purposes.

Stauffer Chemical Co. of Wyoming, 54 IBLA 85 (Apr. 14, 1981)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Irma Spear, 52 IBLA 360 (Feb. 19, 1981)

CONSENT OF AGENCY

Under the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1976), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, such as the Bureau of Reclamation (now the Water and Power Resources Service), the consent of the Secretary of the Interior is necessary under the Act for leasing of the land.

Mardan Exploration, Inc., 52 IBLA 296 (Feb. 9, 1981)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

CONSENT OF AGENCY--Continued

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Dennis Harris, 55 IBLA 280 (June 25, 1981)

LANDS SUBJECT TO

Lands acquired by the Forest Service pursuant to the General Exchange Act of 1922 and the Federal Land Policy and Management Act of 1976 have the status of public lands and are not subject to uranium prospecting permits under the Mineral Leasing Act for Acquired Lands, but such lands are subject to location and entry under the general mining law and to leasing under the Mineral Leasing Act of 1920.

Wyoming Fuel Co., 52 IBLA 302 (Feb. 10, 1981)

An applicant for a prospecting permit on acquired forest lands must execute any special stipulations required by the Department of Agriculture as a condition precedent to the issuance of the permit, or suffer rejection of the offer.

John W. Jewell, 53 IBLA 179 (Mar. 16, 1981)

A noncompetitive oil and gas lease offer for acquired land within the boundaries of the Fort Laramie National Historic Site administered by the National Park Service is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes lands within national parks or monuments from its terms.

Ed Pendleton, 57 IBLA 146 (Aug. 25, 1981)

MINING CLAIMS

(See also Hearings, Millsites, Multiple Mineral Development Act, Surface Resources Act--if included in this Index.)

GENERALLY

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

BLM's decision declaring mining claims null and void ab initio will be vacated where it appears that the claims were located on lands which were open to mineral entry on the date of location.

In the absence of a showing that a person holds a written deed giving him legal title to mining claims which have apparently been abandoned, the person filing notices of location in his own name is properly regarded as a "relocation" of the claims, that is, the

MINING CLAIMS--Continued

GENERALLY--Continued

initiation of new claims which are adverse to the previous claims. Where a person has "relocated" mining claims, these claims date from the time of relocation and do not relate back to the date of location of the earlier claims.

Mining claims located on lands withdrawn from mineral entry are null and void ab initio.

American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981)

Geological inference alone cannot support a finding of discovery.

The apex law gives the owner of a properly located claim on a vein the right to an indefinite extension on the dip of the vein beyond the vertical planes through the side lines of his claim. For a claim to be properly located there must be a discovery within the limits of the claim. The apex law cannot be utilized to establish the validity of another claim absent an independent showing of a valid discovery.

United States v. Leo P. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

The Bureau of Land Management may require maps of mining claims meeting the requirements of 43 CFR 3833.1-2(c)(5) before accepting the recordation of the claims under 43 U.S.C. § 1744 (1976). However, where the record suggests that the claimant may have complied, the decision declaring her claims abandoned will be vacated and the case remanded.

Marion Birch, 53 IBLA 366 (Mar. 30, 1981)

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

No discovery of a valuable mineral deposit is demonstrated where the amounts of mineral yielded by a claim are so small that mining could not be expected to produce an economic return in any way commensurate with the labor and cost involved in extracting, transporting, and processing the mineralization.

United States v. Michael Kurelich et al., 54 IBLA 124 (Apr. 17, 1981)

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Under the "equal-footing" doctrine, a state has title to lands beneath its navigable rivers, and this

MINING CLAIMS--ContinuedGENERALLY--Continued

Board has no jurisdiction to determine the validity of such riverbed mining claims asserted under state law. However, where an unpatented mining claim is filed for record with the Bureau of Land Management pursuant to the Federal mining law and the public records disclose that all public lands embraced in the claim had been withdrawn from mining location before the claimant located the mining claim, the filing is properly rejected by BLM and the claim declared null and void ab initio.

Gary Willis, 56 IBLA 217 (July 22, 1981)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

The discovery of a valuable mineral deposit is essential to a valid mining claim. There must be exposed within the limits of a lode mining claim a vein or lode of rock in place bearing mineral of such quantity and quality that a prudent person would expend time and means with a reasonable prospect of success in developing a valuable mine.

The "marketability test" is a refinement of the "prudent man test" and requires that extraction, removal, and marketing costs be considered, as such factors directly bear on the question whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claims must be tested by the value of the mineral deposit as of the date of withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Leon Noyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

The existence of mining operations actually being conducted on the land on Oct. 21, 1976, and not mere statutory right to use is required to authorize subsequent mining activities in the same manner and degree.

A mining claim located prior to the Federal Land Policy and Management Act of 1976 (Oct. 21, 1976) on which a valid discovery has existed from Oct. 21, 1976, to the present constitutes a valid existing right. The owner of such a claim on land under wilderness review will be allowed to continue mining operations to full development even if operations will impair wilderness

MINING CLAIMS--ContinuedGENERALLY--Continued

suitability, subject to regulation to preclude unnecessary or undue degradation of the land and its resources.

Dale F. Gimblett, 60 IBLA 341 (Dec. 22, 1981)

Havlah Group, 60 IBLA 349 (Dec. 22, 1981) 88 I.D. 1115

In order to obtain a temporary deferment of assessment work, a claimant must file a petition for deferment with the authorized officer of the proper office in accordance with 43 CFR 3852.2, and if the petition is based on a "legal impediment" which interdicts the claimant from access to the claim, the complete details of the impediment must be set out with the application. Where the application is deficient on its face for a failure to provide such details, the claimant should be given the opportunity to provide the necessary information to cure the deficiency.

A. J. Maurer, Jr., 61 IBLA 39 (Dec. 31, 1981)

ABANDONMENT

Where a person locates a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of that section shall be deemed conclusively to constitute an abandonment of the mining claim, or mill or tunnel site by the owner.

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Ione M. Brown, 52 IBLA 44 (Jan. 6, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Thomas F. Byron, Anna E. Philo, 52 IBLA 49 (Jan. 6, 1981)

Where the owner of an unpatented mining claim files a copy of the notice of location of this claim with BLM in 1978, he is required to file a copy of the proof of annual labor performed on the claim during the assessment year ending on Sept. 1, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

Michael Hauger, 52 IBLA 129 (Jan. 16, 1981)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

L. E. Garrison, 52 IBLA 131 (Jan. 16, 1981)

The failure to file an instrument required by 43 CFR 3833.1-2(a), (b), and 3833.2-1 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim and it is properly declared abandoned and void.

Susan Mativo, 52 IBLA 134 (Jan. 16, 1981)

The Federal regulations at 43 CFR 3833.4(a) do not conflict with 43 CFR 3833.4(b) which pertains to the filing of defective or untimely instruments under laws other than the Federal Land Policy and Management Act.

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

Johannes Soyland, 52 IBLA 233 (Feb. 3, 1981)

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Ben Martensen, Anne Martensen, Will Halstead, 52 IBLA 253 (Feb. 6, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Joe Bastone, 52 IBLA 288 (Feb. 9, 1981)

John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim, or the claim must be presumed abandoned and void.

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Lloyd M. Buttgerreit, 52 IBLA 363 (Feb. 19, 1981)

Where the mining claimant alleges that he timely submitted his yearly affidavit of assessment work to BLM, but that it apparently was lost in the mail, this circumstance will not excuse a late filing. One who selects a means of delivering a document must bear the responsibility for any consequential delay or failure of delivery by that means.

Dean Saylor, 52 IBLA 366 (Feb. 19, 1981)

Where mining claimants assert on appeal that affidavits of annual assessment work were timely filed with BLM but present no evidence substantiating that assertion, the Board of Land Appeals will affirm a BLM decision declaring the claims abandoned pursuant to 43 CFR 3833.2-1(a).

Verla Rhoads, Rene Morgan, 52 IBLA 393 (Feb. 24, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Kerry and Ingrid Douglas, 53 IBLA 18 (Feb. 26, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

Judy H. Genger, 59 IBLA 199 (Oct. 27, 1981)

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

Samantha Bowman, 61 IBLA 20 (Dec. 29, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Paul R. Scott and Betty F. Scott, 53 IBLA 75 (Mar. 2, 1981)

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

United States v. Paul M. Koenigsmark et al., 53 IBLA 377 (Mar. 31, 1981)

James Watkins, 54 IBLA 54 (Apr. 9, 1981)

Randal Angeloni, Douglas Blixt, 54 IBLA 56 (Apr. 9, 1981)

John Richard Bodie, 54 IBLA 93 (Apr. 14, 1981)

Joseph Cjurovich, 54 IBLA 100 (Apr. 15, 1981)

Bill C. Ross, 54 IBLA 116 (Apr. 16, 1981)

Charles W. McGowan III, 54 IBLA 119 (Apr. 16, 1981)

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MINING CLAIMS--Continued

ABANDONMENT--Continued

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

Charley E. Gossett, Jr., et al., 54 IBLA 139 (Apr. 17, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

Dell Warren, 54 IBLA 159 (Apr. 21, 1981)

Lyman Mining Co., 54 IBLA 165 (Apr. 21, 1981)

William I. Schindler, 54 IBLA 221 (Apr. 23, 1981)

Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

Mrs. Randolph G. Muniz, 54 IBLA 237 (Apr. 27, 1981)

George H. Willis et al., 54 IBLA 239 (Apr. 27, 1981)

Bernard J. Braker, 54 IBLA 332 (May 5, 1981)

Philip Brandl, George Vournas, 54 IBLA 343 (May 7, 1981)

Reg Whitson, 55 IBLA 5 (May 26, 1981)

Robert C. Cluzen, 55 IBLA 12 (May 26, 1981)

Sidney Hodges, John Golden, 55 IBLA 17 (May 26, 1981)

Earl Kremiller, 55 IBLA 28 (May 27, 1981)

Glenn D. Graham, Lynne L. Graham, 55 IBLA 39 (May 28, 1981)

Joe Benham, 55 IBLA 45 (May 29, 1981)

Betty L. Henry, 55 IBLA 47 (May 29, 1981)

Bruce L. Baker, Robert C. Baker, 55 IBLA 55 (May 29, 1981)

Alex Stewart, 55 IBLA 105 (June 1, 1981)

Alberta K. Romero, 55 IBLA 140 (June 4, 1981)

James K. Pope et al., 55 IBLA 148 (June 8, 1981)

GSA Reserve Corp., 55 IBLA 162 (June 9, 1981)

Howard L. Kirley, 55 IBLA 165 (June 9, 1981)

Joseph Ojurovich, 55 IBLA 182 (June 15, 1981)

W. LeGrande Law, 55 IBLA 193 (June 16, 1981)

Herbert S. McClung, 55 IBLA 260 (June 25, 1981)

Don E. Bates, 55 IBLA 263 (June 25, 1981)

Richard E. Dumas et al., 55 IBLA 382 (June 29, 1981)

Charles M. Lowe et al., 55 IBLA 384 (June 29, 1981)

Melvin and Bernice Darby, 56 IBLA 41 (July 8, 1981)

Jerald D. Ledbetter, 56 IBLA 84 (July 15, 1981)

King of the Hills Mining Co., 56 IBLA 107 (July 16, 1981)

Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)

Walter D. Cosdon, 56 IBLA 112 (July 16, 1981)

Ken Alexander, 56 IBLA 129 (July 16, 1981)

George I. Lakich, 56 IBLA 148 (July 20, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Lyle I. Thompson, 56 IBLA 155 (July 20, 1981)

Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (July 20, 1981)

Louise P. Shultis, 56 IBLA 163 (July 20, 1981)

Rolland Marshall, 56 IBLA 187 (July 20, 1981)

William O. Bahny, 56 IBLA 190 (July 20, 1981)

Harvell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

Estate of Kenneth D. Stahl, 56 IBLA 276 (July 28, 1981)

L. D. Lamoureux, 56 IBLA 298 (July 28, 1981)

William E. Bowman, 56 IBLA 312 (July 29, 1981)

Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)

Felmont Oil Corp., 56 IBLA 321 (July 29, 1981)

Caroline E. Frown, 56 IBLA 334 (July 30, 1981)

John E. Urban, 56 IBLA 343 (July 30, 1981)

Loren Nelson, 56 IBLA 352 (Aug. 3, 1981)

Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)

Shannon N. Thornton, 56 IBLA 359 (Aug. 3, 1981)

Estate of Mary E. Ritchie, 56 IBLA 361 (Aug. 3, 1981)

Jerome F. Brown, 56 IBLA 364 (Aug. 3, 1981)

Edith Gion, 56 IBLA 375 (Aug. 3, 1981)

Lela J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)

Norman L. Moon, 57 IBLA 1 (Aug. 5, 1981)

Don E. Robinson, 57 IBLA 5 (Aug. 5, 1981)

Harry J. Pike, 57 IBLA 15 (Aug. 6, 1981)

Dave R. Newman, 57 IBLA 23 (Aug. 6, 1981)

Howard F. Houser, 57 IBLA 27 (Aug. 6, 1981)

William J. Kroetch, 57 IBLA 29 (Aug. 6, 1981)

M.D.C., Inc., 57 IBLA 35 (Aug. 10, 1981)

Robert E. Wilson, 57 IBLA 40 (Aug. 10, 1981)

Bill Kaser, 57 IBLA 51 (Aug. 17, 1981)

David Truesdell et al., 57 IBLA 60 (Aug. 17, 1981)

Gordon M. Riggs, 57 IBLA 122 (Aug. 25, 1981)

C.O.G.S., Inc., 57 IBLA 128 (Aug. 25, 1981)

Roy Rowe et al., 57 IBLA 136 (Aug. 25, 1981)

Shirley Thompson, Duane E. Thompson, 57 IBLA 154 (Aug. 25, 1981)

George H. Andrews, 57 IBLA 221 (Aug. 27, 1981)

Polar Resources Co. (On Reconsideration), 57 IBLA 237 (Aug. 27, 1981)

L. Grace Wadsworth, 57 IBLA 242 (Aug. 27, 1981)

Verne G. Long, 57 IBLA 263 (Aug. 28, 1981)

Nelson C. Barry, 57 IBLA 268 (Aug. 31, 1981)

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MINING CLAIMS--Continued

ABANDONMENT--Continued

Intermountain Exploration Co., 57 IBLA 271 (Aug. 31, 1981)
Intermountain Exploration Co., 57 IBLA 274 (Aug. 31, 1981)
Rodney N. Cates, 57 IBLA 276 (Aug. 31, 1981)
Del Rupp, 57 IBLA 297 (Aug. 31, 1981)
Erwin Tonne, 57 IBLA 303 (Aug. 31, 1981)
George W. Vrabie, 57 IBLA 330 (Sept. 1, 1981)
Park City Chief Mining Co., 57 IBLA 346 (Sept. 3, 1981)
Kathy Shaner, 57 IBLA 349 (Sept. 8, 1981)
Virgie Dowler, 57 IBLA 389 (Sept. 10, 1981)
Virginia M. Johnston, 57 IBLA 392 (Sept. 10, 1981)
Heidelberg Silver Mining Co., Inc., 58 IBLA 10 (Sept. 16, 1981)
Sonny Champneys, 58 IBLA 29 (Sept. 16, 1981)
Steven V. Miskoff, 58 IBLA 32 (Sept. 16, 1981)
Michael J. Mcaloe, 58 IBLA 35 (Sept. 17, 1981)
Keith R. O'Hara, 58 IBLA 59 (Sept. 21, 1981)
Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)
Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)
James K. Daily, 58 IBLA 134 (Sept. 24, 1981)
Clayton F. Schacht, 58 IBLA 137 (Sept. 25, 1981)
H. S. Rademacher, 58 IBLA 152 (Sept. 25, 1981)
88 I.D. 873
Ben Hester, 58 IBLA 163 (Sept. 28, 1981)
Ray Nyce, 58 IBLA 192 (Sept. 29, 1981)
Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)
Freemont Energy Corp., 58 IBLA 197 (Sept. 29, 1981)
John T. Titus, 58 IBLA 207 (Sept. 29, 1981)
George D. Morrill, H. Grant Noble, 58 IBLA 211 (Sept. 29, 1981)
Tom Applegarth, 58 IBLA 224 (Sept. 30, 1981)
Albert Fouché, James Ulberg, 58 IBLA 230 (Oct. 6, 1981)
Michael J. Fabisiak, 58 IBLA 243 (Oct. 6, 1981)
Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)
John R. Kuhn, 58 IBLA 316 (Oct. 16, 1981)
Lee R. Newson, 58 IBLA 325 (Oct. 16, 1981)
Donald L. Hoffman, 58 IBLA 327 (Oct. 16, 1981)
Eugene M. Goatcher, 58 IBLA 337 (Oct. 19, 1981)
Dennis Forsberg, 58 IBLA 346 (Oct. 19, 1981)
Frank S. Schiff, 58 IBLA 355 (Oct. 20, 1981)
Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)
Judy Kelley, George Kelley, 58 IBLA 369 (Oct. 20, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Warren J. Fyten, 58 IBLA 381 (Oct. 21, 1981)
AOS Co., 59 IBLA 112 (Oct. 26, 1981)
Joe L. Watts, 59 IBLA 127 (Oct. 26, 1981)
Don G. Gilbertson, 59 IBLA 143 (Oct. 26, 1981)
Fletcher D. Fisher, 59 IBLA 150 (Oct. 26, 1981)
Teddy W. Morgan, 59 IBLA 153 (Oct. 26, 1981)
George E. Casler, 59 IBLA 189 (Oct. 27, 1981)
Robert C. LePauvre, 59 IBLA 220 (Oct. 28, 1981)
Louis E. Sharp, 59 IBLA 223 (Oct. 28, 1981)
William R. Smith, 59 IBLA 252 (Oct. 29, 1981)
James W. Cole, 59 IBLA 280 (Oct. 30, 1981)
H. J. Rodabaugh, 59 IBLA 286 (Oct. 30, 1981)
Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)
Hellmut Laue, Arthur J. Devine, 59 IBLA 316 (Nov. 4, 1981)
Lloyd J. Osborn, F.G.C.S., Ltd., 59 IBLA 323 (Nov. 5, 1981)
Lawrence S. McLean, 60 IBLA 65 (Nov. 19, 1981)
W. O. Heinze, 60 IBLA 78 (Nov. 19, 1981)
N. L. Baroid Petroleum Services, 60 IBLA 90 (Nov. 19, 1981)
James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)
Lee R. Heath, 60 IBLA 171 (Nov. 24, 1981)
Marvin G. Stuck, 60 IBLA 197 (Nov. 27, 1981)
Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (Nov. 27, 1981)
Everett V. Cohoe, 60 IBLA 235 (Dec. 4, 1981)
Don Cook, 60 IBLA 255 (Dec. 4, 1981)
Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, and recorded with the Bureau of Land Management in 1979, must file in the proper Bureau of Land Management office evidence of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file conclusively constitutes abandonment of the claim and renders it void.

Janice Fay Ondreako, I. D. Monaghan, 53 IBLA 128 (Mar. 5, 1981)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Cleatus Sypult, 53 IBLA 171 (Mar. 16, 1981)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Fahy Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1978, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Pacific Coast Mines, Inc., 53 IBLA 200 (Mar. 17, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Where mining claimants assert on appeal that evidence of assessment work required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) was timely mailed to the Bureau of Land Management (BLM) but there exists no record of BLM's receipt of the documents, the Board must find that there was not a timely filing and that the claims are declared abandoned and void. Claimants, who chose the manner of mailing, must bear the consequences of nondelivery.

Mr. and Mrs. Jack White, 53 IBLA 267 (Mar. 23, 1981)

John Evanoff, 58 IBLA 403 (Oct. 21, 1981)

MINING CLAIMS--ContinuedABANDONMENT--Continued

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, mill-site, or tunnel site and it properly is declared abandoned and void.

Edward J. Szykowski, Jr., 53 IBLA 310 (Mar. 25, 1981)

Where the owners of unpatented mining claims located prior to Oct. 21, 1976, file notices of recordation for such claims with the Bureau of Land Management on Oct. 22, 1979, but fail to file evidence of annual assessment work until Dec. 28, 1979, pursuant to sec. 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a), the failure to file timely the evidence of annual assessment work constitutes conclusive abandonment of the claims and renders the claims void.

John Plutt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Neither FLPMA nor the regulations provide for any leeway in the application of the penalty for failure to file the required information.

Ernest M. Cuzzocreo, 54 IBLA 108 (Apr. 15, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1979, or the claims will be conclusively deemed to have been abandoned.

Jess E. Minium, Jr., 54 IBLA 134 (Apr. 17, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

Clayton V. Curtis, 54 IBLA 184 (Apr. 22, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

William M. Hand, 54 IBLA 303 (Apr. 29, 1981)

Robert Keough, 54 IBLA 337 (May 5, 1981)

William N. Barbat, 56 IBLA 26 (July 8, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1978, or the claims are conclusively deemed abandoned and, thus, void.

Eugene E. Daugherty, 54 IBLA 352 (May 12, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location or the claim will be conclusively deemed to have been abandoned and declared void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(a) of filing in the proper BLM office.

Inspiration Development Co., 54 IBLA 390 (May 20, 1981)
88 I.D. 557

Lowell L. Patten, 55 IBLA 125 (June 3, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Onco, Inc., 55 IBLA 77 (June 1, 1981)

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely

MINING CLAIMS--Continued

ABANDONMENT--Continued

the required evidence of assessment work or notice of intention to hold.

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the New Mexico State Office by Dec. 30, 1980, will not excuse late filing.

Jack H. Wheatley, 55 IBLA 145 (June 8, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Robert E. Fennell, Clair B. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void.

Allen Turner, 56 IBLA 280 (July 28, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein,

MINING CLAIMS--Continued

ABANDONMENT--Continued

must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Fred W. Croxen III, 56 IBLA 318 (July 29, 1981)

Deficiencies under the regulations in the content of an affidavit of assessment work or notice of intention to hold filed with the Bureau of Land Management with respect to an unpatented mining claim may be considered curable and do not result in a conclusive presumption of abandonment of the claim where the filing meets the requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded and a copy thereof with the Bureau of Land Management prior to Dec. 31 of the year following the calendar year in which the claim was located under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Ted Dilday, 56 IBLA 337 (July 30, 1981) 88 I.D. 682

Ronald Willden, 60 IBLA 173 (Nov. 24, 1981)

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Warren Wheeler, 56 IBLA 350 (Aug. 3, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location, or the claim will be conclusively deemed to have been abandoned and declared void.

Kenneth C. Eichner, 56 IBLA 391 (Aug. 3, 1981)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site. These requirements are mandatory and failure to comply within the time period

MINING CLAIMS--Continued

ABANDONMENT--Continued

prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, millsite or tunnel site.

D. L. Nielsen, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

D. E. Bailey, 57 IBLA 120 (Aug. 25, 1981)

Ralph A. Flumb, 58 IBLA 254 (Oct. 6, 1981)

John Silva, 59 IBLA 167 (Oct. 26, 1981)

Where the case records of unpatented mining claims located prior to Oct. 21, 1976, disclose that prior to Oct. 22, 1979, both copies of notices of location and proofs of assessment work were filed with the proper office of the Bureau of Land Management, it is not proper to declare the claims abandoned and void because the evidence of assessment work was filed prior to the filing of the copies of the notices of location.

Leland W. Wiscombe, Dudley L. Davis, 57 IBLA 161 (Aug. 25, 1981)

It is gross error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit a proof of labor when the case files of the subject mining claims reflect that a proof of labor was timely submitted to BLM and BLM had acknowledged receipt thereof.

Parish Chemical Co., 57 IBLA 240 (Aug. 27, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The fact that mining claims are all placer claims and that there is production on the claims does not prevent the conclusive abandonment and voiding of the claims for failure to comply with FLEMA's recordation requirements.

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744 (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Harlow H. Oberbillig, 57 IBLA 336 (Sept. 1, 1981)

MINING CLAIMS--ContinuedABANDONMENT--Continued

The failure of the owner of an unpatented mining claim to furnish a date of location, not indicated in a copy of the notice of location of the claim filed with BLM, in response to a notice of deficiency requiring the submission of such date within 30 days, may be waived where BLM already had evidence of when the claim was located, the person entrusted with such matters was incapacitated during this time period, and the claimant promptly furnished the date of location upon learning of the failure to respond timely.

Park City Chief Mining Co., 57 IBLA 342 (Sept. 3, 1981)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Vernon Bradley, 57 IBLA 351 (Sept. 8, 1981)

United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

John T. Sweaton et al., 59 IBLA 108 (Oct. 26, 1981)

Elizabeth Francis, 60 IBLA 6 (Nov. 12, 1981)

William Cooper, 60 IBLA 50 (Nov. 17, 1981)

Raymond N. McCool, Harold P. Hinds, 60 IBLA 62 (Nov. 19, 1981)

George Vincent McMahon, 60 IBLA 187 (Nov. 27, 1981)

Nicolaus P. Newby, 60 IBLA 264 (Dec. 15, 1981)

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

Mining claims are properly declared abandoned and void where copies of the notices of location are not filed with the proper Bureau of Land Management office within the time periods prescribed by sec. 314 of the Federal Land Policy and Management Act of 1976.

Donald Jardine, 58 IBLA 49 (Sept. 21, 1981)

Richard Thorpe, Anne Thorpe, 59 IBLA 176 (Oct. 26, 1981)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in calendar year 1977, fails to file with BLM an affidavit of assessment work or a proper notice of intention to hold the claim on or before Dec. 30, 1978, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

John T. Notes, Marie Notes, 58 IBLA 62 (Sept. 21, 1981)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report provided by sec. 28-1 of Title 30, relating thereto, all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Notices of locations for various mining claims and millsites filed for recordation under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), must be rejected where the claims and millsites were previously held null and void following Departmental contest proceedings.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

J. G. Womack, 58 IBLA 85 (Sept. 22, 1981)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Dec. 30 of each year, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

W. Leroy Ewell, 58 IBLA 121 (Sept. 24, 1981)

Riter Ekker, Kerry E. Ekker, 58 IBLA 251 (Oct. 6, 1981)

The failure to file copies of the official record of notices of location of a mining claim within 90 days after the date of location must be deemed conclusively to constitute an abandonment of the mining claim. There is no provision for waiver of this mandatory requirement, and where delivery of the location notices

MINING CLAIMS--ContinuedABANDONMENT--Continued

is delayed by the Postal Service, the consequences of the late filing must be borne by the claimant.

Whelan's Mining and Exploration, Inc., 58 IBLA 127 (Sept. 24, 1981)

Pursuant to sec. 314 of FLPMA and 43 CFR 3833.2-1(b), the owner of unpatented mining claims situated within any unit of the National Park System must file in the proper office of BLM a notice of intention to hold the claims on or before Dec. 30 of each year following the year in which the claims were recorded with the National Park Service as required by the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), and 36 CFR 9.5. Where a permit to do assessment work has been issued by NPS, the owner of the claims may file evidence of assessment work in lieu of the notice of intention to hold the claims. Failure to file either a notice of intention to hold the unpatented mining claims or evidence of assessment work with the proper BLM office within the time period prescribed conclusively constitutes abandonment of the claims.

Uranus, Inc., 58 IBLA 139 (Sept. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Mrs. Walter E. Bolles, 58 IBLA 257 (Oct. 6, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Richard W. Thom, 58 IBLA 291 (Oct. 13, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1978, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)

Oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by sec. 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), are subject to the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did

MINING CLAIMS--ContinuedABANDONMENT--Continued

not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

The recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), applies to claims which rely on the provision of 30 U.S.C. § 38 (1976) to prove location and posting. Where such claims have not been duly recorded, they are a nullity.

United States v. Richard P. Haskins, 59 IELA 1 (Oct. 21, 1981) 88 I.D. 925

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), where the owner of unpatented mining claim located before Oct. 21, 1976, submits a copy of the location notice to BLM in April 1978, and proof of labor to BLM in Oct. 1979, but fails to submit evidence of annual assessment work or notice of intention to hold the mining claim on or before Dec. 30, 1980, BLM properly declares the mining claim abandoned and void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Roy E. Smalley et al., 59 IELA 238 (Oct. 28, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Edward Kelley, 59 IBLA 250 (Oct. 29, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(b), the owner of an unpatented mining claim located on Federal land after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location.

Frank E. Evans, 60 IELA 44 (Nov. 17, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Where the mining claimant files timely a notice of location in the wrong BLM state office, the claim is deemed abandoned and void even though the document was not returned in time to correct the error.

Susan Bettles, 60 IELA 75 (Nov. 19, 1981)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

Karen R. Tony et al., 60 IBLA 167 (Nov. 24, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1977, but which is not accompanied by evidence of assessment work or a notice of intent to hold the claim, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

F. E. Mining Co., Inc., 60 IBLA 178 (Nov. 25, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR Subpart 3833 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claims by the owner.

Jack and Lisa Silbaugh, William E. Dan, 60 IBLA 217 (Nov. 30, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold the claim with the Bureau of Land Management on

MINING CLAIMS--ContinuedABANDONMENT--Continued

or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

C. F. Turley, Jr., 60 IBLA 237 (Dec. 4, 1981)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Prudential Mining & Exploration, Inc., 60 IBLA 363 (Dec. 22, 1981)

The owner of an unpatented mining claim must file in each calendar year, on or before Dec. 30, either an affidavit of assessment work performed on the claim or a notice of intention to hold the mining claim. Failure to so file results in a conclusive statutory presumption of abandonment of the claim by the owner.

Northern Stone Supply, 61 IBLA 36 (Dec. 29, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(b). This requirement is mandatory and where a mining claimant fails to comply therewith the claims are properly declared abandoned and void.

Bessie L. Rayne, Freddie R. Rayne, 61 IBLA 55 (Dec. 31, 1981)

ASSESSMENT WORK

Where the owner of an unpatented mining claim files a copy of the notice of location of this claim with BLM in 1978, he is required to file a copy of the proof of annual labor performed on the claim during the assessment year ending on Sept. 1, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

Michael Hauger, 52 IBLA 129 (Jan. 16, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

L. E. Garrison, 52 IBLA 131 (Jan. 16, 1981)

MINING CLAIMS--ContinuedASSESSMENT WORK--Continued

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

Johannes Soyland, 52 IBLA 233 (Feb. 3, 1981)

Joseph Ojurovich, 54 IBLA 100 (Apr. 15, 1981)

Charley E. Gossett, Jr., et al., 54 IBLA 139 (Apr. 17, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

Clayton V. Curtis, 54 IBLA 184 (Apr. 22, 1981)

C.O.G.S., Inc., 57 IBLA 128 (Aug. 25, 1981)

Failure to timely file evidence of annual assessment work may not be excused because the claimant was unexpectedly called out of town or because the recorded copy of his affidavit of annual labor was not timely returned by the local recording office. Regulation 43 CFR 3833.2-2 does not require the filing of a copy of the recorded affidavit.

Dan Creek Placer Mines, 52 IBLA 243 (Feb. 6, 1981)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim, or the claim must be presumed abandoned and void.

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Lloyd M. Buttgeriet, 52 IBLA 363 (Feb. 19, 1981)

Where the mining claimant alleges that he timely submitted his yearly affidavit of assessment work to BLM, but that it apparently was lost in the mail, this circumstance will not excuse a late filing. One who selects a means of delivering a document must bear the responsibility for any consequential delay or failure of delivery by that means.

Dean Saylor, 52 IBLA 366 (Feb. 19, 1981)

Where mining claimants assert on appeal that affidavits of annual assessment work were timely filed with BLM but present no evidence substantiating that assertion, the Board of Land Appeals will affirm a BLM decision declaring the claims abandoned pursuant to 43 CFR 3833.2-1(a).

Verla Rhoads, Rene Morgan, 52 IBLA 393 (Feb. 24, 1981)

MINING CLAIMS--ContinuedASSESSMENT WORK--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Kerry and Ingrid Douglas, 53 IBLA 18 (Feb. 26, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981)

Samantha Bowman, 61 IBLA 20 (Dec. 29, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, and recorded with the Bureau of Land Management in 1979, must file in the proper Bureau of Land Management office evidence of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file conclusively constitutes abandonment of the claim and renders it void.

Janice Fay Ondreako, I. D. Monaghan, 53 IBLA 128 (Mar. 5, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Cleatus Syputt, 53 IBLA 171 (Mar. 16, 1981)

Where mining claimants assert on appeal that evidence of assessment work required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) was timely mailed to the Bureau of Land Management (BLM) but there exists no record of BLM's receipt of the documents, the Board must find that there was not a timely filing and that the claims are declared abandoned and void. Claimants, who chose the manner of mailing, must bear the consequences of nondelivery.

Mr. and Mrs. Jack White, 53 IBLA 267 (Mar. 23, 1981)

Even though the Bureau of Land Management knew of the existence of certain mining claims, as evidenced by BLM's initiation of contest proceedings against the claims, the claimants were not relieved of the responsibility of complying with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976. The filing of evidence of assessment work is an annual requirement and failure to so file alone

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

is deemed to constitute conclusive abandonment of the claims.

United States v. Paul M. Koenigsmark et al., 53 IBLA 377 (Mar. 31, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Neither FLPMA nor the regulations provide for any leeway in the application of the penalty for failure to file the required information.

Ernest M. Cuzzocreo, 54 IBLA 108 (Apr. 15, 1981)

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

Earl Kremler, 55 IBLA 28 (May 27, 1981)

Glenn D. Graham, Lynne L. Graham, 55 IBLA 39 (May 28, 1981)

Doris McFall, Donald Duncan, Clarence Duncan, 55 IBLA 110 (June 1, 1981)

George I. Lakich, 56 IBLA 148 (July 20, 1981)

Lyle I. Thompson, 56 IBLA 155 (July 20, 1981)

George H. Andrews, 57 IBLA 221 (Aug. 27, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

William M. Hand, 54 IBLA 303 (Apr. 29, 1981)

William N. Barbat, 56 IBLA 26 (July 8, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

Robert Keough, 54 IBLA 337 (May 5, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Where claimants list the wrong name for one of their mining claims on their affidavit of annual assessment work and there is no other means of identifying the claim on the document, BLM properly declares the claim abandoned for failure to comply with 43 CFR 3833.2.

Philip Brandl, George Vournas, 54 IBLA 343 (May 7, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1978, or the claims are conclusively deemed abandoned and, thus, void.

Eugene E. Daugherty, 54 IBLA 352 (May 12, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

The filing of evidence of annual assessment work in the county recording office or any office other than the proper BLM office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Omco, Inc., 55 IBLA 77 (June 1, 1981)

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the New Mexico State Office by Dec. 30, 1980, will not excuse late filing.

Jack H. Wheatley, 55 IBLA 145 (June 8, 1981)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date, even if the mail was delayed through no fault of the sender.

James K. Fore et al., 55 IBLA 148 (June 8, 1981)

MINING CLAIMS--ContinuedASSESSMENT WORK--Continued

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date.

GSA Reserve Corp., 55 IBLA 162 (June 9, 1981)

Michael J. Fabisiak, 58 IBLA 243 (Oct. 6, 1981)

The filing of evidence of assessment work, required by 43 CFR 3833.2-1(a), for any assessment year may be submitted at any time after the work is performed during the assessment year through Dec. 30 following the end of the assessment year.

Thus, filing on Oct. 5, 1979, for the 1980 assessment year which began on Sept. 1, 1979, satisfies the requirement of filing on or before Dec. 30, 1980.

General Electric Co., Nellie McLaughlin, 55 IBLA 185 (June 16, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Robert E. Pennell, Clair E. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)

Walter D. Cosdon, 56 IBLA 112 (July 16, 1981)

Rolland Marshall, 56 IBLA 187 (July 20, 1981)

L. D. Lamoureux, 56 IBLA 298 (July 28, 1981)

Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)

Caroline E. Brown, 56 IBLA 334 (July 30, 1981)

Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)

Estate of Mary E. Ritchie, 56 IBLA 361 (Aug. 3, 1981)

Edith Gion, 56 IBLA 375 (Aug. 3, 1981)

Lela J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)

Dave R. Newman, 57 IBLA 23 (Aug. 6, 1981)

MINING CLAIMS--ContinuedASSESSMENT WORK--Continued

Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)

Verne G. Long, 57 IBLA 263 (Aug. 28, 1981)

Virgie Dowler, 57 IBLA 389 (Sept. 10, 1981)

Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)

John T. Titus, 58 IBLA 207 (Sept. 29, 1981)

Eugene M. Goatcher, 58 IBLA 337 (Oct. 19, 1981)

Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)

Don G. Gilbertson, 59 IBLA 143 (Oct. 26, 1981)

George E. Casler, 59 IBLA 189 (Oct. 27, 1981)

Lloyd J. Osborn, P.G.C.S., Ltd., 59 IBLA 323 (Nov. 5, 1981)

Lawrence S. McLean, 60 IBLA 65 (Nov. 19, 1981)

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void.

Allen Turner, 56 IBLA 280 (July 28, 1981)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30.

James V. Joyce (On Reconsideration), 56 IBLA 327 (July 30, 1981)

Jack McCarley, 58 IBLA 239 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Edwin Striegel, Marie A. O'Brien, 60 IBLA 232 (Dec. 4, 1981)

Where a mining claimant files timely an affidavit of assessment work with the Bureau of Land Management as required by sec. 314 of the Federal Land Policy and Management Act of 1976, which is not the affidavit of assessment required to be filed under 43 CFR 3833.2-1, it is a curable defect, and a mining claimant is entitled to notice and a reasonable opportunity to submit the precise instrument. Failure to do so will result in the Bureau of Land Management declaring the claim abandoned and void.

Harry J. Pike, 57 IBLA 15 (Aug. 6, 1981)

Delivering evidence of annual assessment work after BLM's office hours on Dec. 30, 1980, to the home of a BLM employee does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1. Filing is accomplished only when a document is delivered to and received by the proper BLM office.

M.D.C., Inc., 57 IBLA 35 (Aug. 10, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Where the owner of unpatented mining claims located before Oct. 21, 1976, submits copies of the location notices and proof of labor to BLM in June and Aug. 1979, and submits another proof of labor to BLM in Nov. 1980, it has satisfied the current recording requirements of both the Federal Land Policy and Management Act of 1976, and the regulations in 43 CFR Subpart 3833.

Silica Sand Corp., 57 IBLA 76 (Aug. 21, 1981)

Where, on or before Oct. 21, 1979, a mining claimant files proof of assessment work performed for the preceding assessment year for a claim located on or before Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, the claimant has complied with both the statutory and regulatory requirements for filing assessment work.

Ervin D. Mull, Paul Eichholz, 57 IBLA 278 (Aug. 31, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavit of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1979, or the claim is conclusively deemed abandoned and, thus void.

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Bart Cannon, 57 IBLA 281 (Aug. 31, 1981)

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

George W. Vrabie, 57 IBLA 330 (Sept. 1, 1981)

The filing of evidence of annual assessment work in the county recording office or any office other than the proper BLM office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Michael J. Mealu, 58 IBLA 35 (Sept. 17, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

H. S. Rademacher, 58 IBLA 152 (Sept. 25, 1981)

88 I.D. 873

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Mrs. Walter E. Bolles, 58 IBLA 257 (Oct. 6, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1978, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)

A notice of intention to hold mining claims must set forth the information required by 43 CFR 3833.2-3 and be recorded both in the county where the claims are situated and in the proper BLM office to satisfy the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Dennis Forsberg, 58 IBLA 346 (Oct. 19, 1981)

Because Regulation 43 CFR 3833.2-2 allows for the filing of a copy of the evidence of assessment work which was or will be filed for record, a copy of the recorded affidavit is not necessary to meet the filing requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976). Failure to file timely such evidence of annual assessment work may not be excused because the recorded copy of the owner's affidavit of annual labor was not timely returned by the local recording office.

Judy Kelley, George Kelley, 58 IBLA 369 (Oct. 20, 1981)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Elizabeth Francis, 60 IBLA 6 (Nov. 12, 1981)

William Cooper, 60 IBLA 50 (Nov. 17, 1981)

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by sec. 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), are subject to the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

Where mining claimants assert on appeal that evidence of assessment work required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) was timely mailed to the Bureau of Land Management (BLM), but there exists no record of BLM's receipt of the documents, the Board must find that there was not a timely filing and that the claims are declared abandoned and void. Claimants who chose the manner of delivery must bear the consequences of nondelivery.

John Evanoff, 58 IBLA 403 (Oct. 21, 1981)

Failure to substantially comply with the requirements to annually perform assessment work on a claim which is located on withdrawn land results in a forfeiture of that claim to the United States.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

Evidence of annual assessment work must be delivered to and received by the proper BLM office in order to be filed. Depositing a document in the mails does not constitute filing. Reliance on erroneous information provided by BLM employees which is contrary to regulation does not relieve a mining claimant of this obligation.

Joe L. Watts, 59 IBLA 127 (Oct. 26, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Judy H. Genger, 59 IBLA 199 (Oct. 27, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), where the owner of unpatented mining claim located before Oct. 21, 1976, submits a copy of the location notice to BLM in April 1978, and proof of labor to BLM in Oct. 1979, but fails to submit evidence of annual assessment work or notice of intention to hold the mining claim on or before Dec. 30, 1980, BLM properly declares the mining claim abandoned and void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Roy B. Smalley et al., 59 IBLA 238 (Oct. 28, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the document is actually received by the proper BLM office before such date.

James W. Cole, 59 IBLA 280 (Oct. 30, 1981)

The filing of evidence of annual assessment work in the local recording office established under State law does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)

If the strict proof of assessment work filing requirements of FLPMA are not met, a mining claim is thereby abandoned, whether the filing is only 1 day late or 100, and regardless of any other reason.

The timely filing of evidence of assessment work with a state or county does not, under sec. 3833.4(b) of the regulations, constitute a justification for failure to meet the filing requirements of FLPMA.

Hellout Laue, Arthur J. Devine, 59 IBLA 316 (Nov. 4, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claim located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, evidence of annual assessment work or a notice of intention to hold the mining claim or the mining claim shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

Samuel Waldenberg, 59 IBLA 390 (Nov. 10, 1981)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Harvey A. Clifton et al., 60 IBLA 29 (Nov. 16, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, files proof of annual assessment work or a notice of intention to hold the claim in calendar year 1977, the owner is required by the terms of the statute to file proof of assessment work within each calendar year (on or before Dec. 30) thereafter.

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in 1977, fails to file an affidavit of assessment work

MINING CLAIMS--ContinuedASSESSMENT WORK--Continued

or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which he recorded in the BLM office, i.e., on or after Jan. 1, and on or before Dec. 30, 1978, the claim is properly deemed conclusively abandoned and void.

N. L. Baroid Petroleum Services, 60 IBLA 90 (Nov. 19, 1981)

The presumption that BLM officials properly discharge their duties in receiving and promptly date stamping official filings tendered them is not overcome by unsupported allegations of mining claimants that BLM lost or misprocessed their evidence of assessment work.

Junerwanda J. Papaeliou, Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. Unsupported and uncorroborated allegations do not constitute probative evidence.

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1977, but which is not accompanied by evidence of assessment work or a notice of intent to hold the claim, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

F. E. F. Mining Co., Inc., 60 IBLA 178 (Nov. 25, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold the claim with the Bureau of Land Management on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

C. F. Turley, Jr., 60 IBLA 237 (Dec. 4, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The requirement to file timely copies of evidence of assessment work under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), is not excused by confusion as to the proper office for filing. Where a mining claim is near the dividing line of the Anchorage and Fairbanks districts so that it is virtually impossible to determine the appropriate office from the map at 43 CFR 1821.2-1, a timely filing in either office will satisfy the requirement. However, the statute does not authorize the Department to accept late filings.

Although 43 CFR 3851.3 provides that failure to perform assessment work will render a claim subject to cancellation, the performance of such assessment work does not excuse the failure to file timely evidence of annual assessment work required by 43 U.S.C. § 1744(a)

MINING CLAIMS--ContinuedASSESSMENT WORK--Continued

(1976) or relieve the claimant of the mandatory consequence of abandonment of the claim under 43 U.S.C. § 1744(c) (1976), if he fails to make a timely filing.

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

The owner of an unpatented mining claim must file in each calendar year, on or before Dec. 30, either an affidavit of assessment work performed on the claim or a notice of intention to hold the mining claim. Failure to so file results in a conclusive statutory presumption of abandonment of the claim by the owner.

Northern Stone Supply, 61 IBLA 36 (Dec. 29, 1981)

In order to obtain a temporary deferment of assessment work, a claimant must file a petition for deferment with the authorized officer of the proper office in accordance with 43 CFR 3852.2, and if the petition is based on a "legal impediment" which interdicts the claimant from access to the claim, the complete details of the impediment must be set out with the application. Where the application is deficient on its face for a failure to provide such details, the claimant should be given the opportunity to provide the necessary information to cure the deficiency.

A. J. Maurer, Jr., 61 IBLA 39 (Dec. 31, 1981)

COMMON VARIETIES OF MINERALSGenerally

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a mining claim for such material located prior to the date of the Act to be sustained, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and maintained reasonably continuously thereafter.

Under the "prudent man test" in order to qualify as "valuable mineral deposits" the disputed deposits must be of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. To qualify as "valuable mineral deposits" under the "marketability test" it must be shown that the minerals can be "extracted, removed and marketed at a profit."

In determining whether or not a mining claim is valid, the marketability test requires that there be, at the time of discovery, a market for the discovered material that is sufficiently profitable to attract the efforts of a person of ordinary prudence. In determining marketability, evidence of sales is only one factor to be considered in the application of the prudent man-marketability test.

United States v. Estrella M. Kincanon et al., 54 IBLA 95 (Apr. 15, 1981)

The mere fact that a mineral deposit is an uncommon variety of stone does not make it per se marketable. The mining claimant must show that the deposit within the claim is marketable at a profit.

United States v. Mamie Vaughn et al., 56 IBLA 247 (July 24, 1981)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Special Value

Where deposit of Yavapai schist has pleasant coloration and allegedly can be blasted out and broken in such a manner as to tend to maintain unfeathered edges, it is nevertheless a common variety of building stone and is, therefore, unlocatable, as these characteristics are not unique properties setting it apart from vast amounts of other common stone found throughout the area where the deposit is situated.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Whether a deposit of stone is an uncommon variety under sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1976), and therefore locatable under the mining law depends on whether the deposit has a property which gives it a distinct and special value as compared with other deposits of similar materials. It must be shown that the material under consideration has some property which gives it value for purposes for which other materials are not suited, or, if the material is to be used for the same purposes as other materials of common occurrence, that it possesses some property which gives it a special value for such uses, which value may be reflected by the fact that it commands a higher price in the market place.

United States v. Mamie Vaughn et al., 56 IBLA 247 (July 24, 1981)

Unique Property

Where deposit of Yavapai schist has pleasant coloration and allegedly can be blasted out and broken in such a manner as to tend to maintain unfeathered edges, it is nevertheless a common variety of building stone and is, therefore, unlocatable, as these characteristics are not unique properties setting it apart from vast amounts of other common stone found throughout the area where the deposit is situated.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

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United States v. Mamie Vaughn et al., 56 IBLA 247 (July 24, 1981)

CONTESTS

Where a Government contest complaint, when filed and received by mineral claimants, correctly identifies all claimants as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their

MINING CLAIMS--Continued

CONTESTS--Continued

failure to so move will not vitiate the effectiveness of an adjudication of the validity of a mining claim.

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to the mineral claimant's lack of good faith must be clear.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

Where the Bureau of Land Management is not satisfied with the evidence of discovery submitted by a mineral patent applicant, it may request further information. However, if it concludes that the information presented is insufficient to support a discovery, it may not summarily reject the patent application. It must initiate a contest proceeding.

United States Steel Corp., 52 IBLA 319 (Feb. 19, 1981)

When the Government contests a mining claim on a charge of no discovery of a valuable mineral deposit it assumes the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

A sufficient prima facie case by the Government does not require positive proof that there has been no discovery made or that the mining claim is nonmineral in character. Upon the Government's presentation of a prima facie case, the burden shifts to the claimant to prove by a preponderance of the evidence that he indeed has effected a discovery of a valuable mineral deposit within the limits of the claim.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Leo L. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Earl F. Fox, 53 IBLA 333 (Mar. 26, 1981)

United States v. Flanch P. Day, Wilma Jean Kendall, 56 IBLA 300 (July 29, 1981)

MINING CLAIMS--Continued

CONTESTS--Continued

The sufficiency of a Government's prima facie case is dependent upon the direct evidence presented by the Government together with the testimony of Government witnesses elicited in cross-examination.

United States v. Maurice Duval et al., 53 IBLA 341 (Mar. 26, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Jesse M. Taggart et al., 53 IBLA 353 (Mar. 30, 1981)

United States v. The Dredge Corp., 54 IBLA 281 (Apr. 28, 1981)

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Michael Kurelich et al., 54 IBLA 124 (Apr. 17, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings. It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

United States v. J. L. Noss and Mary F. Noss, 54 IBLA 355 (May 12, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become

MINING CLAIMS--Continued

CONTESTS--Continued

valid even though there might be a discovery at a later date.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and is present within the limits of the claim.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established, and if not rebutted, the mining claim is properly declared invalid.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

United States v. D. J. Polashek, 57 IBLA 104 (Aug. 25, 1981)

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167 (Aug. 27, 1981) 88 I.D. 772

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

MINING CLAIMS--Continued

CONTESTS--Continued

Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's discovery points. It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law or by rule, order, or regulation. 43 CFR 4.22(b).

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record completed at the hearing, despite the absence of evidence in support of the party's case.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

Notices of locations for various mining claims and millsites filed for recordation under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), must be rejected where the claims and millsites were previously held null and void following Departmental contest proceedings.

J. G. Womack, 58 IBLA 85 (Sept. 22, 1981)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Absent a patent application, in a mining contest hearing where the Government's evidence of lack of discovery relates only to insufficient quality and quantity of mineralization and the mining claimant produces evidence sufficient to preponderate on those issues, the contest complaint is properly dismissed.

United States v. Malin W. Lewis, 58 IBLA 282 (Oct. 8, 1981)

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence.

United States v. Miguel Nunez, 59 IBLA 134 (Oct. 26, 1981)

MINING CLAIMS--Continued

CONTESTS--Continued

Where the facts and the law are properly set forth and applied in an Administrative Law Judge's decision holding a placer mining claim null and void for a lack of discovery of a valuable mineral deposit, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Scott Johnson, 59 IBLA 207 (Oct. 27, 1981)

Where the Government contests the validity of a mining claim, it bears only the burden of establishing a prima facie case of lack of discovery; the burden then shifts to the claimant to overcome the Government's showing by a preponderance of the evidence. A prima facie case is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

United States v. Leon Noyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

Where facts and law are properly set forth and applied in Administrative Law Judge decision holding lode mining claims void for lack of discovery, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Russell and Lena Journigan, 59 IBLA 393 (Nov. 10, 1981)

DETERMINATION OF VALIDITY

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.4, filing recordation documents in a Bureau of Land Management District Office, rather than the proper State Office, the day of the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordation upon receipt of the documents after the 90-day deadline had passed.

Jose G. Gonzalez, 52 IBLA 270 (Feb. 6, 1981)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining claim is not mineral in character is a normal adjunct to a charge of no discovery.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined both as of the date of the withdrawal and the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

Where, as to certain claims, the Administrative Law Judge finds that the contestee preponderates on the issue of discovery, it is proper to dismiss the Government's contest as to those claims.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

Where demand is limited to a very few consumers who supply their needs from their own sources so that the market is "closed" or "captive," a mining claimant must prove that willing consumers exist to whom the claimant could have reasonably expected to sell at a profit. Failure to make that showing will result in a finding that the mineral deposit has no economic value and does not qualify as a discovery.

The holding of a mining claim as a reserve for future development without present marketability does not impart validity to the claim.

United States v. Jesse M. Taggart et al., 53 IBLA 353 (Mar. 30, 1981)

Where the Board is in agreement with the result reached in an Administrative Law Judge's decision in a mining claim contest and the Administrative Law Judge has correctly summarized the facts and properly evaluated the evidence in light of the applicable law, the Board may adopt the decision.

Evidence in a mining claim contest showing only that further exploration might be warranted is insufficient to establish the discovery of a valuable mineral deposit.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a mining claim for such material located prior to the date of the Act to be sustained, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and maintained reasonably continuously thereafter.

Under the "prudent man test" in order to qualify as "valuable mineral deposits" the disputed deposits must be of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. To qualify as "valuable mineral deposits" under the "marketability test" it must be shown that the minerals can be "extracted, removed and marketed at a profit."

In determining whether or not a mining claim is valid, the marketability test requires that there be, at the time of discovery, a market for the discovered material that is sufficiently profitable to attract the efforts of a person of ordinary prudence. In determining marketability, evidence of sales is only one factor to be considered in the application of the prudent man-marketability test.

United States v. Estrella M. Kincanon et al., 54 IBLA 95 (Apr. 15, 1981)

Recordation of an unpatented mining claim does not render valid any claim which would not otherwise be valid under applicable law. Acceptance by BLM of recordation documents does not constitute a recognition of the validity of the claim and BLM is not estopped to declare the claim null and void where it was located on land withdrawn from mining location at the time of the location.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

No discovery of a valuable mineral deposit is demonstrated where the amounts of mineral yielded by a claim are so small that mining could not be expected to produce an economic return in any way commensurate with the labor and cost involved in extracting, transporting, and processing the mineralization.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Michael Kurelich et al., 54 IBLA 124 (Apr. 17, 1981)

Where, in a contest on an application for a mineral patent, it is determined that no discovery has been made on a claim, the necessary result of this determination is that the mining claim is invalid and must be so declared.

United States v. Ralph F. Frogley, Melvin S. Eilers, 54 IBLA 321 (Apr. 30, 1981)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Clarence E. Fitzgerald, 55 IBLA 31 (May 28, 1981)

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

There has been no discovery of a valuable mineral deposit within a lode mining claim unless there has been physically exposed within the limits of the claim a vein or lode-bearing mineral of such quality and quantity as to justify the expenditure of money for the development of a mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

In evaluating a mineral deposit within a mining claim geologic inference may be used where the deposit has been adequately physically exposed. However, geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine; geologic inference may not be used to infer mineralization throughout a vein area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Under the "equal-footing" doctrine, a state has title to lands beneath its navigable rivers, and this Board has no jurisdiction to determine the validity of such riverbed mining claims asserted under state law. However, where an unpatented mining claim is filed for record with the Bureau of Land Management pursuant to the Federal mining law and the public records disclose that all public lands embraced in the claim had been withdrawn from mining location before the claimant located the mining claim, the filing is properly rejected by BLM and the claim declared null and void ab initio.

Gary Willis, 56 IBLA 217 (July 22, 1981)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

In order to meet the marketability test a mining claimant need not rely on his own successful marketing efforts to prove marketability of material from the claim. The test may be satisfied if successful marketing by others has sufficiently established that claimant's comparable material is itself marketable.

United States v. Mamie Vaughn et al., 56 IBLA 247 (July 24, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws for an Indian reservation is null and void ab initio.

Steve Foster, Elmer Brewster, 56 IBLA 282 (July 28, 1981)

Pursuant to the Departmental Manual 601 LM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

Oregon Portland Cement Co., 6 ANCSA 65 (Aug. 25, 1981)
88 I.D. 760

Albert Hanan et al.; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCSA 111 (Sept. 29, 1981)

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

A prima facie case of lack of discovery of a valuable mineral deposit is established when a mineral examiner testifies for the United States that he examined each claim and could find no evidence showing the discovery of a valuable mineral deposit. Mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. E. J. Polashek, 57 IBLA 104 (Aug. 25, 1981)

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

Land is mineral in character when known conditions engender the belief that the land contains

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining claim is not mineral in character is a normal adjunct to a charge of no discovery.

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claim is valid.

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

Where the Board is in agreement with the result reached in an Administrative Law Judge's decision in a mining claim contest and where the Administrative Law Judge has correctly summarized the facts and properly evaluated the evidence in light of the applicable law, the Board may adopt the decision.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Absent a patent application, in a mining contest hearing where the Government's evidence of lack of discovery relates only to insufficient quality and quantity of mineralization and the mining claimant produces evidence sufficient to preponderate on those issues, the contest complaint is properly dismissed.

United States v. Malin W. Lewis, 58 IBLA 282 (Oct. 8, 1981)

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Scott Johnson, 59 IBLA 207 (Oct. 27, 1981)

The discovery of a valuable mineral deposit is essential to a valid mining claim. There must be exposed within the limits of a lode mining claim a vein or lode of rock in place bearing mineral of such quantity and quality that a prudent person would expend time and means with a reasonable prospect of success in developing a valuable mine.

The "marketability test" is a refinement of the "prudent man test" and requires that extraction, removal, and marketing costs be considered, as such factors directly bear on the question whether a person

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claims must be tested by the value of the mineral deposit as of the date of withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

Where the Government contests the validity of a mining claim, it bears only the burden of establishing a prima facie case of lack of discovery; the burden then shifts to the claimant to overcome the Government's showing by a preponderance of the evidence. A prima facie case is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

United States v. Leon Novce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

DISCOVERY

Generally

Where qualified mineral examiners testify that they examined and took samples from areas exposed by a mining claimant while working his claims, and where this examination and the assay of those samples reveal that mineralization in those areas was so slight as to be worth only a fraction of the costs of extracting it and was therefore insufficient to warrant exploitation, a prima facie case of invalidity of the claim is established. Where the claimant testifies that his claims were only a good prospect which would justify intensive exploration, this prima facie showing is not rebutted, and the claims are properly declared invalid.

United States v. Estate of Alfred N. Hawes et al., 52 IBLA 164 (Jan. 21, 1981)

Where, on appeal, a mining claimant submits arguments similar or identical to those presented before the Administrative Law Judge after the hearing had been concluded and the decision of the Administrative Law Judge correctly summarizes the facts and applies the applicable law, the decision of the Administrative Law Judge will be adopted by the Board.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

When the Government contests a mining claim on a charge of no discovery of a valuable mineral deposit it assumes the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

deposit has not been found simply because the facts might warrant a search for such a deposit.

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining claim is not mineral in character is a normal adjunct to a charge of no discovery.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

A discovery of a valuable mineral deposit exists under the Federal mining laws where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence. Where the opinion of contestee's expert that discovery of gold was made is not supported by clear evidence that the claim holds sufficient quantities of gold to make mining profitable, the Board will affirm an Administrative Law Judge's finding of invalidity.

United States v. John McDowell, 53 IBLA 270 (Mar. 24, 1981)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The "prudent man test" is met only where it appears that the mineralization on the claim has been physically exposed and is valuable enough to yield a fair market value in excess of the costs of extraction, removal, and sale. Evidence of mineralization which would justify further exploration, but not development, does not suffice to meet the discovery requirement.

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined both as of the date of the withdrawal and the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

Where, as to certain claims, the Administrative Law Judge finds that the contestee preponderates on the issue of discovery, it is proper to dismiss the Government's contest as to those claims.

The apex law gives the owner of a properly located claim on a vein the right to an indefinite extension on

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

the dip of the vein beyond the vertical planes through the side lines of his claim. For a claim to be properly located there must be a discovery within the limits of the claim. The apex law cannot be utilized to establish the validity of another claim absent an independent showing of a valid discovery.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Earl F. Fox, 53 IBLA 333 (Mar. 26, 1981)

United States v. J. L. Noss and Mary P. Noss, 54 IBLA 355 (May 12, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Jesse M. Taggart et al., 53 IBLA 353 (Mar. 30, 1981)

Where the Board is in agreement with the result reached in an Administrative Law Judge's decision in a mining claim contest and the Administrative Law Judge has correctly summarized the facts and properly evaluated the evidence in light of the applicable law, the Board may adopt the decision.

Government mineral examiners are not required to perform discovery work for mining claimants or to explore beyond a claimant's discovery points. It is incumbent on a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Evidence in a mining claim contest showing only that further exploration might be warranted is insufficient to establish the discovery of a valuable mineral deposit.

Assay reports have limited probative value concerning the existence of a valuable mineral deposit on a mining claim when they are not supported by sufficient evidence to show how and where the samples were taken and how the samples were treated.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

No discovery of a valuable mineral deposit is demonstrated where the amounts of mineral yielded by a claim are so small that mining could not be expected to produce an economic return in any way commensurate with the labor and cost involved in extracting, transporting, and processing the mineralization.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

A Government mineral examiner is under no duty to undertake discovery work or to explore beyond the current workings of a claim.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

The prudent man rule, rather than the comparative value rule, is the proper test for determining the existence of a discovery of a valuable mineral deposit under the general mining law.

United States v. Michael Kurelich et al., 54 IBLA 124 (Apr. 17, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

United States v. The Dredge Corp., 54 IBLA 281 (Apr. 28, 1981)

Where, in a contest on an application for a mineral patent, it is determined that no discovery has been made on a claim, the necessary result of this determination is that the mining claim is invalid and must be so declared.

United States v. Ralph F. Frogley, Melvin S. Eilers, 54 IBLA 321 (Apr. 30, 1981)

There has been no discovery of a valuable mineral deposit within a lode mining claim unless there has been physically exposed within the limits of the claim a vein or lode-bearing mineral of such quality and quantity as to justify the expenditure of money for the development of a mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however,

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

In evaluating a mineral deposit within a mining claim geologic inference may be used where the deposit has been adequately physically exposed. However, geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine; geologic inference may not be used to infer mineralization throughout a vein area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A discovery of valuable mineral exists where the claim contains mineralization of sufficient quality and quantity to justify a prudent man in the further expenditure of labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. John McDowell and Miguel Nunez, 56 IBLA 100 (July 15, 1981)

A discovery of valuable minerals under Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Blanch P. Day, Wilma Jean Kendall, 56 IBLA 300 (July 29, 1981)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. D. J. Polashek, 57 IBLA 104 (Aug. 25, 1981)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining claim is not mineral in character is a normal adjunct to a charge of no discovery.

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

A discovery of a valuable mineral deposit exists under the Federal mining laws where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, Id., a valuable mineral deposit has

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

not been found simply because the facts might warrant a search for such a deposit.

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

Where the Board is in agreement with the result reached in an Administrative Law Judge's decision in a mining claim contest and where the Administrative Law Judge has correctly summarized the facts and properly evaluated the evidence in light of the applicable law, the Board may adopt the decision.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. A valuable mineral deposit has not been found simply because the facts might warrant further search for such a deposit.

United States v. Miguel Nunez, 59 IBLA 134 (Oct. 26, 1981)

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Scott Johnson, 59 IBLA 207 (Oct. 27, 1981)

The discovery of a valuable mineral deposit is essential to a valid mining claim. There must be exposed within the limits of a lode mining claim a vein or lode of rock in place bearing mineral of such quantity and quality that a prudent person would expend time and means with a reasonable prospect of success in developing a valuable mine.

The "marketability test" is a refinement of the "prudent man test" and requires that extraction, removal, and marketing costs be considered, as such factors directly bear on the question whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claims must be tested by the value of the mineral deposit as of the date of withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Leon Noyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGeologic Inference

Geological inference alone cannot support a finding of discovery.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

In evaluating a mineral deposit within a mining claim geologic inference may be used where the deposit has been adequately physically exposed. However, geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine; geologic inference may not be used to infer mineralization throughout a vein area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

Marketability

A mineral claimant whose claims embrace deposits of both common and uncommon varieties of minerals cannot aggregate the profits returned from mining the common variety and those netted from mining the uncommon variety to show a qualifying discovery.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

A discovery of a valuable mineral deposit exists under the Federal mining laws where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

United States v. John McDowell, 53 IBLA 270 (Mar. 24, 1981)

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

Where demand is limited to a very few consumers who supply their needs from their own sources so that the market is "closed" or "captive," a mining claimant must show a reasonable likelihood that the consumers will buy the material from the claim at a profit to the mining claimant. Where such a showing is made, a contest complaint is properly dismissed.

United States v. Maurice Duval et al., 53 IBLA 341 (Mar. 26, 1981)

A mining claimant may demonstrate present marketability by a favorable showing of such factors as the accessibility of the deposit, proximity to the market, the existence of a present demand, and bona fide efforts to develop the claim and compete in the market.

Where demand is limited to a very few consumers who supply their needs from their own sources so that the market is "closed" or "captive," a mining claimant must prove that willing consumers exist to whom the claimant could have reasonably expected to sell at a profit. Failure to make that showing will result in a

MINING CLAIMS--ContinuedDISCOVERY--ContinuedMarketability--Continued

finding that the mineral deposit has no economic value and does not qualify as a discovery.

The holding of a mining claim as a reserve for future development without present marketability does not impart validity to the claim.

United States v. Jesse M. Taggart et al., 53 IBLA 353 (Mar. 30, 1981)

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a mining claim for such material located prior to the date of the Act to be sustained, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and maintained reasonably continuously thereafter.

Under the "prudent man test" in order to qualify as "valuable mineral deposits" the disputed deposits must be of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. To qualify as "valuable mineral deposits" under the "marketability test" it must be shown that the minerals can be "extracted, removed and marketed at a profit."

In determining whether or not a mining claim is valid, the marketability test requires that there be, at the time of discovery, a market for the discovered material that is sufficiently profitable to attract the efforts of a person of ordinary prudence. In determining marketability, evidence of sales is only one factor to be considered in the application of the prudent man-marketability test.

United States v. Estella M. Kincanon et al., 54 IBLA 95 (Apr. 15, 1981)

A mining claimant will not have satisfied his burden of proof with respect to marketability where the evidence indicates a superabundance of the mineral of commercial quality such that supply exceeds demand and the claimant fails to show that his mineral deposit possesses a unique advantage over other deposits from potentially competitive sources.

United States v. The Dredge Corp., 54 IBLA 281 (Apr. 28, 1981)

Establishing the marketability of a mineral deposit requires more than a showing that the mineral is theoretically marketable or intrinsically valuable. The claimant must demonstrate present continuing demand for the output of his mine.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

The mere fact that a mineral deposit is an uncommon variety of stone does not make it per se marketable. The mining claimant must show that the deposit within the claim is marketable at a profit.

In order to meet the marketability test a mining claimant need not rely on his own successful marketing efforts to prove marketability of material from the

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

claim. The test may be satisfied if successful marketing by others has sufficiently established that claimant's comparable material is itself marketable.

United States v. Manie Vaughn et al., 56 IBLA 247 (July 24, 1981)

A discovery of valuable minerals under Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

United States v. Blanch P. Day, Wilma Jean Kendall. 56 IBLA 300 (July 29, 1981)

Land may be considered "chiefly valuable for building stone" where the building stone values of the mineral deposit sought are greater than any other mineral values or nonmineral values for which the land may be appropriated.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

EXCESS RESERVES

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167 (Aug. 27, 1981) 88 I.D. 772

HEARINGS

Where a Government contest complaint, when filed and received by mineral claimants, correctly identifies all claimants as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to so move will not vitiate the effectiveness of an adjudication of the validity of a mining claim.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

Notice and an opportunity for a hearing is required only where there is a disputed question of fact and where validity of a millsite location turns on the legal effect to be given facts of record concerning the status of the land when the millsite was located, no hearing is required.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

MINING CLAIMS--Continued

HEARINGS--Continued

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the decision becomes final.

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. J. L. Noss and Mary F. Noss, 54 IBLA 355 (May 12, 1981)

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish equitable justification for reopening the hearing.

United States v. Arwin Speckert, 55 IBLA 340 (June 26, 1981)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

Mining claims located on land previously withdrawn from mineral entry are null and void ab initio. However, where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment to a previous location or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. M. Polk, Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981)

Mining claimants who have not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 have no due process right to an evidentiary hearing before the Department of the Interior to show that their actual intent not to abandon rebuts that section's conclusive presumption of abandonment, since the Department is duty-bound to enforce the conclusiveness of the statute's presumption whenever noncompliance has occurred, and any such hearing would be valueless.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

A mining claimant is not entitled to a hearing before his claim can be declared invalid for having been located on land which is segregated from location.

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

MINING CLAIMS--Continued

HEARINGS--Continued

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Absent a patent application, in a mining contest hearing where the Government's evidence of lack of discovery relates only to insufficient quality and quantity of mineralization and the mining claimant produces evidence sufficient to preponderate on those issues, the contest complaint is properly dismissed.

United States v. Malin W. Lewis, 58 IBLA 282 (Oct. 8, 1981)

Where the Government contests the validity of a mining claim, it bears only the burden of establishing a prima facie case of lack of discovery; the burden then shifts to the claimant to overcome the Government's showing by a preponderance of the evidence. A prima facie case is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

United States v. Leon Noyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

To warrant a further hearing in a mining claim contest based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to warrant a further hearing.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

LANDS SUBJECT TO

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

Sam McCormack, 52 IBLA 56 (Jan. 6, 1981)

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by the Pickett Act, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by the terms of 43 U.S.C. § 142 (1970) which provided that withdrawn lands shall remain open to location for metalliferous minerals.

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

A mining claim located on land which was segregated and closed to mineral entry is properly declared null and void ab initio.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

BLM's decision declaring mining claims null and void ab initio will be vacated where it appears that the claims were located on lands which were open to mineral entry on the date of location.

Mining claims located on lands withdrawn from mineral entry are null and void ab initio.

American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981)

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Ariel C. MacDonald et al., 52 IBLA 384 (Feb. 19, 1981)

Portions of mining claims located on lands on which the minerals have been withdrawn from mineral entry are properly declared null and void ab initio; however, where the case record does not support a finding that all the claims in issue are partially situated on such land, the case will be remanded for readjudication.

Harl and Jewell Rightwire, 53 IBLA 125 (Mar. 5, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates the lands from all subsequent appropriation, including location under the mining laws; however, the application to select has no segregative effect when at the time the application is filed, the land is withdrawn from all forms of appropriation under the public land laws, including selections by a state.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal confers no rights on the locator and is properly declared null and void ab initio.

Allen L. Brannon, Sr., 53 IBLA 251 (Mar. 19, 1981)

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

A mining claim located after Aug. 11, 1955, is properly declared null and void ab initio when at the time of location the claim is located on lands withdrawn for power development or powersites and such lands are under examination and survey by a prospective licensee of the Federal Power Commission under an unanceled preliminary permit. This preliminary permit, issued under the Federal Power Act and authorizing the prospective licensee to conduct its examination and survey, may not have been renewed in the case of such prospective licensee more than once.

Robert A. Pettigrew, 54 IBLA 257 (Apr. 28, 1981)

Where an executive order issued subsequent to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970), does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Clarence E. Fitzgerald, 55 IBLA 31 (May 28, 1981)

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

Land which has been patented without a reservation of minerals to the United States is not available for the location of placer mining claims, and BLM properly may reject documents submitted for recordation of a mining claim insofar as they cover patented land.

D. Estremado, 55 IBLA 49 (May 29, 1981)

Under the "equal-footing" doctrine, a state has title to lands beneath its navigable rivers, and this Board has no jurisdiction to determine the validity of such riverbed mining claims asserted under state law. However, where an unpatented mining claim is filed for record with the Bureau of Land Management pursuant to the Federal mining law and the public records disclose that all public lands embraced in the claim had been withdrawn from mining location before the claimant located the mining claim, the filing is properly

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

rejected by BLM and the claim declared null and void ab initio.

Gary Willis, 56 IBLA 217 (July 22, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws for an Indian reservation is null and void ab initio.

Steve Foster, Elmer Brewster, 56 IBLA 282 (July 28, 1981)

Mining claims located on land previously withdrawn from mineral entry are null and void ab initio. However, where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment to a previous location or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. M. Polk, Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

Richard Thorpe, Anne Thorpe, 59 IBLA 176 (Oct. 26, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands, where the filing is regular on its face, segregates the lands from all subsequent appropriation, including location and entry under the mining laws and a millsite located while the land is so segregated is null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

Lands which in 1929 were included in an oil and gas permit issued under the Mineral Leasing Act of 1920, were not subject to mining location, and mining claims located on such lands are invalid ab initio.

Ernest Higbee et al., 60 IBLA 267 (Dec. 17, 1981)

Where the public records of the Department indicate that land is not open to entry, even if the notation is in error, any mining claim thereafter located is null and void ab initio until the records are changed to indicate that the land is available.

Junior L. Dennis, 61 IBLA 8 (Dec. 29, 1981)

MINING CLAIMS--Continued

LOCATION

Where a person locates a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of that section shall be deemed conclusively to constitute an abandonment of the mining claim, or mill or tunnel site by the owner.

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Ione M. Brown, 52 IBLA 44 (Jan. 6, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Thomas F. Byron, Anna B. Philo, 52 IBLA 49 (Jan. 6, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Joe Bastone, 52 IBLA 288 (Feb. 9, 1981)

In the absence of a showing that a person holds a written deed giving him legal title to mining claims which have apparently been abandoned, the person filing notices of location in his own name is properly regarded as a "relocation" of the claims, that is, the initiation of new claims which are adverse to the previous claims. Where a person has "relocated" mining claims, these claims date from the time of relocation and do not relate back to the date of location of the earlier claims.

American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under Arizona law, it is the date specified on the notice of location filed with the local recorder's office.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after

MINING CLAIMS--Continued

LOCATION--Continued

rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are scrivener's errors.

John C. and Theresa K. Buchanan, 52 IBLA 387 (Feb. 19, 1981)

H. Mason Coggin, 54 IBLA 224 (Apr. 27, 1981)

The apex law gives the owner of a properly located claim on a vein the right to an indefinite extension on the dip of the vein beyond the vertical planes through the side lines of his claim. For a claim to be properly located there must be a discovery within the limits of the claim. The apex law cannot be utilized to establish the validity of another claim absent an independent showing of a valid discovery.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with the proper BLM office within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(b) of filing in the proper BLM office.

Janie S. Nelson, Terry L. Sullivan, 55 IBLA 289 (June 25, 1981)

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under California law, it is the date of posting location notice on the claim.

The dates of location of mining claims as shown on the notice of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are in error.

C. B. Shannon, 55 IBLA 312 (June 26, 1981)

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal, where the location notice describes additional or new land not contained in the original location.

Larry D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

MINING CLAIMS--Continued

LOCATION--Continued

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Gary Willis, 56 IBLA 217 (July 22, 1981)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site. These requirements are mandatory and failure to comply within the time period prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, millsite or tunnel site.

D. L. Nielsen, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

While deposits of limestone chiefly valuable for building stone were subject to location only as placer claims, deposits of limestone valuable for their chemical or metallurgical properties are properly located according to the form of their deposition.

All placer claims must conform "as near as practicable" with the system of rectangular public land surveys. Where a claim does not so conform and it is not possible to amend the claim so that it does, the entry must be canceled.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located on Federal land after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location.

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

MINING CLAIMS--Continued

LOCATION--Continued

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

Prudential Mining & Exploration, Inc., 60 IFLA 363 (Dec. 22, 1981)

LODE CLAIMS

No discovery of a valuable mineral deposit is demonstrated where the amounts of mineral yielded by a claim are so small that mining could not be expected to produce an economic return in any way commensurate with the labor and cost involved in extracting, transporting, and processing the mineralization.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Michael Kurelich et al., 54 IBLA 124 (Apr. 17, 1981)

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

To constitute discovery upon a lode mining claim, there must be exposed within the limits of the claim a vein or lode of quartz or other rock in place, bearing gold or some other mineral deposit in such quality and quantity which would warrant a prudent man in the expenditure of his time and money with a reasonable prospect of success in developing a valuable mine.

While deposits of limestone chiefly valuable for building stone were subject to location only as placer claims, deposits of limestone valuable for their chemical or metallurgical properties are properly located according to the form of their deposition.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

The discovery of a valuable mineral deposit is essential to a valid mining claim. There must be exposed within the limits of a lode mining claim a vein or lode of rock in place bearing mineral of such quantity and quality that a prudent person would expend

MINING CLAIMS--Continued

LODE CLAIMS--Continued

time and means with a reasonable prospect of success in developing a valuable mine.

The "marketability test" is a refinement of the "prudent man test" and requires that extraction, removal, and marketing costs be considered, as such factors directly bear on the question whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claims must be tested by the value of the mineral deposit as of the date of withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Leon Noyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

MILLSITES

A millsite located on land withdrawn from all forms of appropriation under the public land laws, including location and entry under the mining laws, except locations for metalliferous minerals, is null and void ab initio because it is not a location for metalliferous minerals under the mining law.

Notice and an opportunity for a hearing is required only where there is a disputed question of fact and where validity of a millsite location turns on the legal effect to be given facts of record concerning the status of the land when the millsite was located, no hearing is required.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Where a dependent millsite is allegedly operated only in connection with a lode mining claim which is invalid, it necessarily follows that the millsite is invalid.

United States v. Michael Kurelich et al., 54 IBLA 124 (Apr. 17, 1981)

Under 43 CFR 3833.2-1(d), a millsite owner is not required to file a notice of intention to hold the site until Dec. 30 of the year following the year in which the owner files the notice of location for the site with BLM for recordation. A BLM decision declaring six millsite claims abandoned and void because notices of intention to hold, filed at the same time as the notices of location for the sites, are defective will be reversed.

Louis L. Osmer, Jr., et al., 56 IBLA 30 (July 8, 1981)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Feldslite Corporation of America, 56 IBLA 78 (July 15, 1981) 88 I.D. 643

Mrs. Otis Teaford, 56 IBLA 367 (Aug. 3, 1981)

MINING CLAIMS--Continued

MILLSITES--Continued

Dave R. Newman, 57 IBLA 23 (Aug. 6, 1981)

Bruce J. Reiss, 57 IBLA 152 (Aug. 25, 1981)

Nelson C. Barry, 57 IBLA 268 (Aug. 31, 1981)

Harlow H. Oberbillig, 57 IBLA 336 (Sept. 1, 1981)

Keith R. O'Hara, 58 IBLA 59 (Sept. 21, 1981)

Inez Crews et al., 59 IBLA 257 (Oct. 29, 1981)

Harvey A. Clifton et al., 60 IBLA 29 (Nov. 16, 1981)

Since millsites may only be located on nonmineral land, a millsite claim is necessarily adverse to a mining claim. Thus, land embraced by a millsite claim is not open to the initiation of rights under 30 U.S.C. § 38 (1976).

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

The failure to file a copy of a notice or certificate of location for a millsite as required by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2 in the proper Bureau of Land Management office within the time period prescribed therein conclusively constitutes abandonment of the millsite by the owner.

Fletcher D. Fisher, 59 IBLA 150 (Oct. 26, 1981)

A vague intention to use or occupy land embraced in a millsite claim for mining or milling purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite.

United States v. Lyle E. and Diane Campbell, 59 IBLA 261 (Oct. 29, 1981)

"Notation rule." Under the notation rule a millsite claim, located at a time when the master title plat in the local Bureau of Land Management office shows that the lands embraced by the claim are included in a state selection application, is properly declared null and void ab initio because notation of the state selection application on the official records segregates the land from further appropriation. The rule applies even where the notation was posted in error, or where the segregative use so noted is void, voidable, or has terminated.

A mining claim or millsite located on land at a time when the land is segregated from the operation of the mining laws by a State selection application is properly declared null and void ab initio.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

MINERAL LANDS

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining

MINING CLAIMS--Continued

MINERAL LANDS--Continued

claim is not mineral in character is a normal adjunct to a charge of no discovery.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

PATENT

If the record does not contain sufficient evidence to persuade the Secretary or his authorized officers that the law has been complied with, the Department cannot legally grant the gratuity which claimants request, i.e., issuance of a mineral patent.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

Where an applicant for a mineral patent has been requested to provide additional information and has not done so after 18 months, the Bureau of Land Management may properly deny his request for a further extension of time to submit that information and reject his mineral patent application without prejudice to applicant's right to file a proper application in the future. But when the pendency of an appeal from that decision has stayed its effectiveness beyond the time needed by the applicants to obtain the necessary information, the Board may give the applicants 10 additional days to file the information with BLM before the rejection of their application becomes effective.

Wilbur G. Hallauer et al., 52 IBLA 202 (Jan. 26, 1981)

Where the Bureau of Land Management is not satisfied with the evidence of discovery submitted by a mineral patent applicant, it may request further information. However, if it concludes that the information presented is insufficient to support a discovery, it may not summarily reject the patent application. It must initiate a contest proceeding.

United States Steel Corp., 52 IBLA 319 (Feb. 19, 1981)

At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be sustained on the basis of the protestants' allegation that they are the owners of a conflicting claim which now is deemed abandoned and void as a matter of law.

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

Where, in a contest on an application for a mineral patent, it is determined that no discovery has been made on a claim, the necessary result of this determination is that the mining claim is invalid and must be so declared.

United States v. Ralph F. Frogley, Melvin S. Eilers, 54 IBLA 321 (Apr. 30, 1981)

MINING CLAIMS--Continued

PLACER CLAIMS

Cil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by sec. 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), are subject to the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

A placer mining claim has been defined as ground that includes valuable deposits not in place, that is, not fixed in rock, but which are in a loose state.

Under provisions of the Act of Aug. 4, 1892, 30 U.S.C. § 161 (1976), known as the Building Stone Act, land chiefly valuable for building stone can only be entered by mining claims in the placer form, regardless of the actual mode of occurrence of the deposit.

While deposits of limestone chiefly valuable for building stone were subject to location only as placer claims, deposits of limestone valuable for their chemical or metallurgical properties are properly located according to the form of their deposition.

Nothing in 30 U.S.C. § 38 (1976) alters the requirement limiting each individual claimant to 20 acres per location. Thus, for a single possessory claim of 85 acres to be sustained, it must be shown that five individuals held and worked the claim for the requisite period of time.

All placer claims must conform "as near as practicable" with the system of rectangular public land surveys. Where a claim does not so conform and it is not possible to amend the claim so that it does, the entry must be canceled.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

POSSESSORY RIGHT

When an unpatented mining claim is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated such unpatented mining claims prior to conveyance.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al.; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

A notice of location which is in proper form and timely filed with the correct fee must be accepted and recorded by BLM notwithstanding the protest of a rival mining claimant that he has a superior and exclusive possessory right to the same ground. Such disputes are not within the jurisdiction of this Department, and can be resolved only by private litigation between the parties in courts of competent jurisdiction.

W. W. Allstead, 58 IBLA 46 (Sept. 21, 1981)

MINING CLAIMS--Continued

POSSESSORY RIGHT--Continued

Under the provisions of 30 U.S.C. § 38 (1976), the holding and working of a claim for the period of time equal to the State's statute of limitations is the legal equivalent of proofs of acts of location, recording, and transfer. This provision does not, however, alter other requirements of the mining laws, such as the necessity of a discovery or limitations on acreage which may be taken up in a claim.

The requirements of 30 U.S.C. § 38 (1976), relating to "holding" and "working" a claim may be met where the assessment work requirements have been met and where there is actual possession or occupancy of the claim.

Nothing in 30 U.S.C. § 38 (1976) alters the requirement limiting each individual claimant to 20 acres per location. Thus, for a single possessory claim of 85 acres to be sustained, it must be shown that five individuals held and worked the claim for the requisite period of time.

Since millsites may only be located on nonmineral land, a millsite claim is necessarily adverse to a mining claim. Thus, land embraced by a millsite claim is not open to the initiation of rights under 30 U.S.C. § 38 (1976).

The recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), applies to claims which rely on the provision of 30 U.S.C. § 38 (1976) to prove location and posting. Where such claims have not been duly recorded, they are a nullity.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

In order to establish a right against the United States under sec. 2332, Revised Statutes, 30 U.S.C. § 38 (1976), actual possession, following discovery of a valuable mineral deposit, under color of right for the complete period of the State's statute of limitations governing adverse possession of mining claims must occur during a period when the land is open to operation of the mining laws. Where the record does not support an assertion of a right under 30 U.S.C. § 38 (1976) to a mineral patent, the application for such patent is properly rejected and the mining claim declared invalid.

Ernest Higbee et al., 60 IBLA 267 (Dec. 17, 1981)

POWERSITE LANDS

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. R. James Steward, 54 IBLA 67 (Apr. 10, 1981)

MINING CLAIMS--Continued

POWERSITE LANDS--Continued

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a mining claim on land withdrawn for power development or powersites, where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. Robert A. Pettigrew, 54 IBLA 149 (Apr. 17, 1981) 88 I.D. 453

A mining claim located after Aug. 11, 1955, is properly declared null and void ab initio when at the time of location the claim is located on lands withdrawn for power development or powersites and such lands are under examination and survey by a prospective licensee of the Federal Power Commission under an uncanceled preliminary permit. This preliminary permit, issued under the Federal Power Act and authorizing the prospective licensee to conduct its examination and survey, may not have been renewed in the case of such prospective licensee more than once.

Robert A. Pettigrew, 54 IBLA 257 (Apr. 28, 1981)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

John C. Farrell, 55 IBLA 42 (May 28, 1981)

RECORDATION

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Don Chris A. Coyne, 52 IBLA 1 (Jan. 5, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Melart, Inc., 52 IBLA 5 (Jan. 5, 1981)

Thomas F. Byron, Anna B. Philo, 52 IBLA 49 (Jan. 6, 1981)

John T. Smeaton et al., 59 IBLA 108 (Oct. 26, 1981)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if unpatented mining claims located after Oct. 21, 1976, are not supported annually by either an affidavit of assessment work or a notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intent to abandon and he did not fully understand the regulations.

Dale E. Henkins, 52 IBLA 9 (Jan. 5, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim.

William E. Talbott et al., 52 IBLA 12 (Jan. 5, 1981)

Where a person locates a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of that section shall be deemed conclusively to constitute an abandonment of the mining claim, or mill or tunnel site by the owner.

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Ione M. Brown, 52 IBLA 44 (Jan. 6, 1981)

Under 43 CFR 3833.1-2(c) BLM may require a mining claimant to supplement his initial filing of recordation information with additional information including a description of the lands in his claims, according to the rectangular survey system, and to within a quarter section.

Walter Everly, 52 IBLA 58 (Jan. 6, 1981)

A copy of a recorded notice or certificate of location of a mining claim will not be accepted by BLM for recordation if it is not accompanied by the service fee required under 43 CFR 3833.1-2(d).

Susan Mativo, 52 IBLA 134 (Jan. 16, 1981)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, or prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lowell M. Paige, 52 IBLA 137 (Jan. 16, 1981)

The Federal regulations at 43 CFR 3833.4(a) do not conflict with 43 CFR 3833.4(b) which pertains to the filing of defective or untimely instruments under laws other than the Federal Land Policy and Management Act.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act are constitutional.

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

Where a mining claimant attempts to file notices of location for 24 claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only 23 of those claims, BLM shall require the claimant to select 23 claims to which the money tendered shall be applied. The remaining one claim is properly declared abandoned and void in accordance with 43 CFR 3833.4.

Floyd R. Woody, 52 IBLA 153 (Jan. 21, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

Philip L. Griner, 52 IBLA 179 (Jan. 26, 1981)

Raymond N. McCool, Harold P. Hinds, 60 IBLA 62 (Nov. 19, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Henri Guzek, 52 IBLA 200 (Jan. 26, 1981)

MINING CLAIMS--ContinuedRECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted for recordation on May 14, 1980, after having been located on May 3, 1980, and the filing fee is not paid to BLM until Aug. 11, 1980, the recordation date of the notice is Aug. 11, 1980, and thus more than 90 days after the date of location.

Ben Martensen, Anne Martensen, Will Halstead, 52 IBLA 253 (Feb. 6, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Joe Bastone, 52 IBLA 288 (Feb. 9, 1981)

John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Robert G. Sunder, Jeanne E. R. Sunder, 52 IBLA 375 (Feb. 19, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under Arizona law, it is the date specified on the notice of location filed with the local recorder's office.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are scrivener's errors.

John C. and Theresa K. Buchanan, 52 IBLA 387 (Feb. 19, 1981)

H. Mason Coggin, 54 IBLA 224 (Apr. 27, 1981)

MINING CLAIMS--ContinuedRECORDATION--Continued

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)

Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

William H. Tomporowski, 53 IBLA 21 (Feb. 26, 1981)

Walter Schivo, 53 IBLA 40 (Feb. 26, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Cleatus Syputt, 53 IBLA 171 (Mar. 16, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Edward J. Szynkowski, Jr., 53 IBLA 310 (Mar. 25, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Even though the Bureau of Land Management knew of the existence of certain mining claims, as evidenced by BLM's initiation of contest proceedings against the claims, the claimants were not relieved of the responsibility of complying with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976. The filing of evidence of assessment work is an annual requirement and failure to so file alone is deemed to constitute conclusive abandonment of the claims.

United States v. Paul M. Koenigsmark et al., 53 IBLA 377 (Mar. 31, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Randal Angeloni, Douglas Blixt, 54 IBLA 56 (Apr. 9, 1981)

Andrew Kasamis, 56 IBLA 332 (July 30, 1981)

Dia Art Foundation, 56 IBLA 357 (Aug. 3, 1981)

Robert W. Soehner, 56 IBLA 370 (Aug. 3, 1981)

David Truesdell et al., 57 IBLA 60 (Aug. 17, 1981)

Bonnie L. Chafe, 57 IBLA 384 (Sept. 10, 1981)

Recordation of an unpatented mining claim does not render valid any claim which would not otherwise be valid under applicable law. Acceptance by BLM of recordation documents does not constitute a recognition of the validity of the claim and BLM is not estopped to declare the claim null and void where it was located on land withdrawn from mining location at the time of the location.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

When the owner of a lode or placer mining claim files a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, he has complied with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2.

Lester L. Learned, 54 IBLA 147 (Apr. 17, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

It is proper for the Bureau of Land Management to refuse to accept a check postdated 30 days after

MINING CLAIMS--Continued

RECORDATION--Continued

receipt as satisfactory payment of service fees for recordation of mining claims.

Jesse L. Miller, 54 IBLA 187 (Apr. 22, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 31, 1978, or the claims are conclusively deemed abandoned and, thus, void.

Eugene E. Daugherty, 54 IBLA 352 (May 12, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Richard E. Forsgren, 54 IBLA 362 (May 18, 1981)

Vernon Bradley, 57 IBLA 351 (Sept. 8, 1981)

James N. Tibbals, Janet E. Tibbals, 58 IBLA 42 (Sept. 17, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location or the claim will be conclusively deemed to have been abandoned and declared void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(a) of filing in the proper BLM office.

Inspiration Development Co., 54 IBLA 390 (May 20, 1981)
88 I.L. 557

Lowell L. Patten, 55 IBLA 125 (June 3, 1981)

Land which has been patented without a reservation of minerals to the United States is not available for the location of placer mining claims, and BLM properly may reject documents submitted for recordation of a mining claim insofar as they cover patented land.

D. Estremadac, 55 IBLA 49 (May 29, 1981)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Omco, Inc., 55 IBLA 77 (June 1, 1981)

Timely transmittal of the documents required by sec. 314 of the Federal Land Policy and Management Act for recordation of a mining claim to the California State Office when the claim is located in Nevada does not meet the requirements that the documents be filed timely in the proper office.

Alex Stewart, 55 IBLA 105 (June 1, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely the required evidence of assessment work or notice of intention to hold.

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

A copy of the official record of the notice of location for a mining claim located after Oct. 21, 1976, must be delivered to and received by the proper Bureau of Land Management office within 90 days after the date of location in order to be filed timely. Depositing a document in the mails does not constitute filing.

Don E. Bates, 55 IBLA 263 (June 25, 1981)

Del Rupp, 57 IBLA 297 (Aug. 31, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with the proper BLM office within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(b) of filing in the proper BLM office.

Janie S. Nelson, Terry L. Sullivan, 55 IBLA 289 (June 25, 1981)

MINING CLAIMS--ContinuedRECORDATION--Continued

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under California law, it is the date of posting location notice on the claim.

The dates of location of mining claims as shown on the notice of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are in error.

C. B. Shannon, 55 IBLA 312 (June 26, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Where a mining claimant believes that assessment work would be a prohibited or useless act, the claimant should file a notice of intention to hold pursuant to 43 CFR 3833.2-3.

Robert E. Fennell, Clair B. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Robert B. Melcher, 56 IBLA 165 (July 20, 1981)

Dennis A. Lane, 56 IBLA 171 (July 20, 1981)

Jacqueline A. Riddlemoser, 56 IBLA 173 (July 20, 1981)

John R. Davies, 56 IBLA 175 (July 20, 1981)

Edward McNally, Merrill Porter, 56 IBLA 177 (July 20, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Mi-Oro Mining Co., 56 IBLA 179 (July 20, 1981)

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

William O. Bahny, 56 IBLA 190 (July 20, 1981)

Shirley Thompson, Duane R. Thompson, 57 IBLA 154 (Aug. 25, 1981)

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

William T. Best, 56 IBLA 234 (July 22, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of intervening inclement weather, loss must be borne by claimant.

Valiant Resources, Inc., 56 IBLA 278 (July 28, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void.

Allen Turner, 56 IBLA 280 (July 28, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Apr. 6, 1981, and the filing fees therefor are not paid to BLM until Apr. 27, 1981, the recordation date of the notices is Apr. 27, 1981.

Fred W. Croxen III, 56 IBLA 318 (July 29, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Regina McMahon, 56 IBLA 372 (Aug. 3, 1981)

Bruce R. Berringer, 60 IBLA 258 (Dec. 4, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year following the year of recording with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Jack Terwilliger, 56 IBLA 383 (Aug. 3, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location, or the claim will be conclusively deemed to have been abandoned and declared void.

Kenneth C. Eichner, 56 IBLA 391 (Aug. 3, 1981)

The filing with BLM prior to Oct. 21, 1976, of a copy of the notice of the location of an unpatented mining claim, pursuant to the Mining Claims Rights Restoration Act, 30 U.S.C. § 623 (1976), does not relieve the owner of the claim of the filing obligation imposed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and its implementing regulations.

Don E. Robinson, 57 IBLA 5 (Aug. 5, 1981)

The mailing of a notice of intention to hold a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

William J. Kroetch, 57 IBLA 29 (Aug. 6, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site. These requirements are mandatory and failure to comply within the time period prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, millsite or tunnel site.

Under 43 CFR 3833.1-2(d), a location notice for each mining claim filed for recordation must be accompanied by the stated fee. As this is a mandatory requirement there is no recordation unless the documents are accompanied by the stated fee.

D. L. Nielsen, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

D. E. Bailey, 57 IBLA 120 (Aug. 25, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(b). This requirement is mandatory and where a mining claimant fails to comply therewith the claims are properly declared abandoned and void.

Art Fields, Russel Adams, 57 IBLA 142 (Aug. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

John R. Erickson, 57 IBLA 157 (Aug. 25, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the first proof of labor was filed with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Magdalene Pickering Franklin, 57 IBLA 244 (Aug. 27, 1981)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Richard E. and Gloria M. Naas, Michael E. and Echo Ayoub, 57 IBLA 266 (Aug. 28, 1981)

Phyllis J. Birchard, 59 IBLA 247 (Oct. 29, 1981)

Herman Black, 60 IBLA 229 (Dec. 4, 1981)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Harlow H. Oberbillig, 57 IBLA 336 (Sept. 1, 1981)

The failure of the owner of an unpatented mining claim to furnish a date of location, not indicated in a copy of the notice of location of the claim filed with BLM, in response to a notice of deficiency requiring the submission of such date within 30 days, may be waived where BLM already had evidence of when the claim was located, the person entrusted with such matters was incapacitated during this time period, and the claimant promptly furnished the date of location upon learning of the failure to respond timely.

Park City Chief Mining Co., 57 IBLA 342 (Sept. 3, 1981)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed for recordation shall be accompanied by a one time \$5 service fee. This is a mandatory requirement and without payment of the fee there can be no recordation.

Park City Chief Mining Co., 57 IBLA 346 (Sept. 3, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file in the proper BLM office a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which such notice or evidence was first filed with BLM. There is no provision for

MINING CLAIMS--Continued

RECORDATION--Continued

waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Philip Cramer, 57 IBLA 386 (Sept. 10, 1981)

Reliance upon information allegedly provided by a county official contrary to the terms of sec. 314(b), Federal Land Policy and Management Act, 43 U.S.C. § 1744(b), cannot create any rights not authorized by law.

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sonny Champneys, 58 IBLA 29 (Sept. 16, 1981)

A notice of location which is in proper form and timely filed with the correct fee must be accepted and recorded by BLM notwithstanding the protest of a rival mining claimant that he has a superior and exclusive possessory right to the same ground. Such disputes are not within the jurisdiction of this Department, and can be resolved only by private litigation between the parties in courts of competent jurisdiction.

W. W. Allstead, 58 IBLA 46 (Sept. 21, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the official record of a notice of intention to hold or evidence of performance of annual assessment work on the claim, as recorded in the office where the location notice of the claim is recorded, prior to Dec. 31 of each calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement or of the statutory consequences of the claim being deemed conclusively to be abandoned for failure to comply.

Polar Resources Co., 58 IBLA 70 (Sept. 22, 1981)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report provided by sec. 28-1 of Title 30, relating thereto, all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

A detailed map prepared by the mining claimant's geologist, showing the geologist's labor performed on the claims during the assessment year in question, cannot be considered as meeting the requirements of sec. 314 of FLPMA with respect to notice of intention to hold a mining claim, where it was not filed for recordation with the local recording office where the notice of location is prescribed by state law to be

MINING CLAIMS--Continued

RECORDATION--Continued

recorded.

The language in sec. 314 of FLPMA, 43 U.S.C. § 1744(c) (1976), relating to defective and untimely filings does not protect a claimant from the statutory conclusive presumption of abandonment where he has not met the recordation requirements of FLPMA. It is only defectiveness or untimeliness of filings under other Federal laws that shall not impair the validity of a mining claim which is otherwise valid under FLPMA.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where the official time and date stamp of a BLM office is impressed upon a document, it is presumed that the impression is accurate, in the absence of a clear showing to the contrary by appellant.

Whelan's Mining and Exploration, Inc., 58 IBLA 127 (Sept. 24, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Modoc Gem and Mineral Society, 58 IBLA 142 (Sept. 25, 1981)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Ben Hester, 58 IBLA 163 (Sept. 28, 1981)

Louis F. Sharp, 59 IBLA 223 (Oct. 28, 1981)

Marvin G. Stuck, 60 IBLA 197 (Nov. 27, 1981)

The filing of the notice of location of a mining claim does not meet the requirement for filing a notice of intention to hold the mining claim.

Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

MINING CLAIMS--Continued

RECORDATION--Continued

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The mailing of a notice of intention to hold a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

Ralph A. Plumb, 58 IBLA 254 (Oct. 6, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Mrs. Walter E. Bolles, 58 IBLA 257 (Oct. 6, 1981)

Where mining claims were located in 1940 and copies of the official record of the notices of location were not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction

MINING CLAIMS--Continued

RECORDATION--Continued

to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper Bureau of Land Management office, of such instrument or recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence except microfilm, of an amended instrument which may change or alter the description of the claim. A quit-claim deed is not an acceptable substitute in the absence of a showing that the certificates of location were unavailable.

John J. Vikarcik, George W. Vrable, 58 IBLA 377 (Oct. 21, 1981)

The owner of an unpatented mining claim must file a copy of the official record of the notice or certificate of location of the claim within 90 days after the date of location of that claim in the proper BLM office. In computing the 90-day period, the date of location is not included but the last day of the period is included. A copy of the notice of location for a claim located on Apr. 20, 1978, must have been filed with BLM by July 19, 1978.

Warren J. Fyten, 58 IBLA 381 (Oct. 21, 1981)

Oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by sec. 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), are subject to the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

MINING CLAIMS--ContinuedRECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement.

AOS Co., 59 IBLA 112 (Oct. 26, 1981)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The mailing of an affidavit of assessment work concerning a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper Bureau of Land Management office before such date.

John Silva, 59 IBLA 167 (Oct. 26, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper office of BLM within 90 days after the date of location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lee Smart, 59 IBLA 235 (Oct. 28, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), where the owner of unpatented mining claim located before Oct. 21, 1976, submits a copy of the location notice to BLM in April 1978, and proof of labor to BLM in Oct. 1979, but fails to submit evidence of annual assessment work or notice of intention to hold the mining claim on or before Dec. 30, 1980, BLM properly declares the mining claim abandoned and void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Roy B. Smalley et al., 59 IBLA 238 (Oct. 28, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because it was delayed in the mail, the consequences must be borne by the claimant.

Inez Crews et al., 59 IBLA 257 (Oct. 29, 1981)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Elizabeth Francis, 60 IBLA 6 (Nov. 12, 1981)

William Cooper, 60 IBLA 50 (Nov. 17, 1981)

Edwin Striegel, Marie A. O'Brien, 60 IBLA 232 (Dec. 4, 1981)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located on Federal land after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location.

Pursuant to 43 CFR 3833.1-2(d), payment of a \$5 service fee must accompany the filing with BLM of each notice or certificate of mining location; otherwise, each unpaid filing shall be rejected.

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2) (1976), the owner of unpatented mining claims located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording whichever date is sooner evidence of annual assessment work performed or a notice of intention to hold the mining claim or the mining claims shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

Buck A. Rogers, 60 IBLA 59 (Nov. 18, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 and 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim and a copy of the current proof of labor as recorded in the office where the notice of location is recorded, with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner.

Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

Junervanda J. Papaeliou, Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

A copy of the official record of the evidence of assessment work for a mining claim must be delivered to and received by the proper office of the Bureau of Land Management on or before Dec. 30 of each calendar year in order to be timely filed. Depositing a document in the mails does not constitute filing.

George Vincent McMahon, 60 IBLA 187 (Nov. 27, 1981)

Where a mining claim was located in September 1974 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Nicolaus P. Newby, 60 IBLA 264 (Dec. 15, 1981)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The mailing of a notice of location prior to the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

Prudential Mining & Exploration, Inc., 60 IBLA 363 (Dec. 22, 1981)

The requirement to file timely copies of evidence of assessment work under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), is not excused by confusion as to the proper office for filing. Where a mining claim is near the dividing line of the Anchorage and Fairbanks districts so that it is virtually impossible to determine the appropriate office from the map at 43 CFR 1821.2-1,

MINING CLAIMS--Continued

RECORDATION--Continued

a timely filing in either office will satisfy the requirement. However, the statute does not authorize the Department to accept late filings.

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

When mail is properly addressed and deposited in the United States mails, with postage thereon duly prepaid, there is a rebuttable presumption that it was received by the addressee in the ordinary course of mail.

Delivery by post office of a document to a BLM state office by placement of such mail in the post office box where the state office customarily receives its mail, during the hours in which the state office is open to the public for the filing of documents, constitutes delivery to and receipt by the state office of the document.

Where the envelope containing a mining claimant's evidence of annual assessment work required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), addressed to the Oregon State Office, Bureau of Land Management, at its post office box address in Portland, Oregon, was postmarked in Seattle, Washington, on Dec. 29, 1980, and it is established that whereas in the ordinary course of mail the letter would have been delivered to the state office at its regular post office box prior to 4:15 p.m. on the following day, the last hour for filing such evidence, but that any mail placed in the post office box after 1 p.m. nevertheless would not have been picked up by the state office until a day later, the evidence of assessment work is presumed to have been filed on Dec. 30, even though the date and time stamp of the state office indicates that it was not received until 7:30 a.m. on Dec. 31.

Washington Chromium Co., 60 IBLA 378 (Dec. 23, 1981)

The mailing of an affidavit of assessment work concerning a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the evidence of assessment work is actually received by the proper Bureau of Land Management office before such date.

Savantha Rowman, 61 IBLA 20 (Dec. 29, 1981)

The owner of an unpatented mining claim must file in each calendar year, on or before Dec. 30, either an affidavit of assessment work performed on the claim or a notice of intention to hold the mining claim. Failure to so file results in a conclusive statutory presumption of abandonment of the claim by the owner.

Northern Stone Supply, 61 IBLA 36 (Dec. 29, 1981)

There is a rebuttable presumption that administrative officers properly discharge their duties and do not lose or misfile documents timely filed. Where, however, the BLM computer print-out indicates that evidence of assessment work was received for one of appellant's four mining claims, and where appellant submits a copy of proof of labor for all four claims which had been recorded in the proper county recording office and then submitted to BLM, and where BLM had no record of having issued any adverse decision for the fourth claim but appellant submitted a copy of the decision he had received, the cumulative evidence rebuts the presumption of regularity.

Robert T. Reynolds, 61 IBLA 52 (Dec. 31, 1981)

MINING CLAIMS--Continued

RELOCATION

In the absence of a showing that a person holds a written deed giving him legal title to mining claims which have apparently been abandoned, the person filing notices of location in his own name is properly regarded as a "relocation" of the claims, that is, the initiation of new claims which are adverse to the previous claims. Where a person has "relocated" mining claims, these claims date from the time of relocation and do not relate back to the date of location of the earlier claims.

American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981)

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal, where the location notice describes additional or new land not contained in the original location.

Larry D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Gary Willis, 56 IBLA 217 (July 22, 1981)

SPECIAL ACTS

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

SURFACE USES

A verified statement filed under sec. 5 of the Surface Resources Act of 1955, 30 U.S.C. § 613 (1976), is properly rejected when the mining claim in connection with which it is filed has been declared abandoned and void for failure to comply with the recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Paul R. Scott and Betty F. Scott, 53 IBLA 75 (Mar. 2, 1981)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land

MINING CLAIMS--Continued

SURFACE USES--Continued

withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. R. James Steward, 54 IBLA 67 (Apr. 10, 1981)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a mining claim on land withdrawn for power development or powersites, where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. Robert A. Pettigrew, 54 IBLA 149 (Apr. 17, 1981) 88 I.L. 453

TITLE

A notice of location which is in proper form and timely filed with the correct fee must be accepted and recorded by BLM notwithstanding the protest of a rival mining claimant that he has a superior and exclusive possessory right to the same ground. Such disputes are not within the jurisdiction of this Department, and can be resolved only by private litigation between the parties in courts of competent jurisdiction.

W. W. Allstead, 58 IBLA 46 (Sept. 21, 1981)

TUNNEL SITES

The failure of a holder of a tunnel site claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the tunnel site is a curable defect and the tunnel site may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Robert F. Wilson, 57 IBLA 40 (Aug. 10, 1981)

John R. Erickson, 57 IBLA 157 (Aug. 25, 1981)

Heidelberg Silver Mining Co., Inc., 58 IBLA 10 (Sept. 16, 1981)

WITHDRAWN LAND

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by the Pickett Act, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by the terms of 43 U.S.C. § 142 (1970) which provided that withdrawn lands shall remain open to location for metalliferous minerals.

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official

MINING CLAIMS--ContinuedWITHDRAWN LAND--Continued

status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

A mining claim located on land which was segregated and closed to mineral entry is properly declared null and void ab initio.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

Mining claims located on lands withdrawn from mineral entry are null and void ab initio.

American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Susan E. Mitchell, 53 IBLA 42 (Feb. 26, 1981)

Portions of mining claims located on lands on which the minerals have been withdrawn from mineral entry are properly declared null and void ab initio; however, where the case record does not support a finding that all the claims in issue are partially situated on such land, the case will be remanded for readjudication.

Harl and Jewell Rightmire, 53 IBLA 125 (Mar. 5, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates the lands from all subsequent appropriation, including location under the mining laws; however, the application to select has no segregative effect when at the time the application is filed, the land is withdrawn from all forms of appropriation under the public land laws, including selections by a state.

A millsite located on land withdrawn from all forms of appropriation under the public land laws, including location and entry under the mining laws, except locations for metalliferous minerals, is null and void ab initio because it is not a location for metalliferous minerals under the mining law.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal confers no rights on the locator and is properly declared null and void ab initio.

Allen L. Brannon, Sr., 53 IBLA 251 (Mar. 19, 1981)

MINING CLAIMS--ContinuedWITHDRAWN LAND--Continued

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined both as of the date of the withdrawal and the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

United States v. Leo D. Jackson et al., 53 IBLA 269 (Mar. 24, 1981)

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

Where an executive order issued subsequent to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970), does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981)

Sec. 9 of the Wild and Scenic Rivers Act withdraws from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank, or are situated within one-quarter mile of the bank, of any river listed as a potential addition to the Wild and Scenic Rivers System or actually designated as a wild river under the system. Land constituting the bed and banks and within one-quarter mile of the banks of the North Fork of the American River from Cedars to the Auburn Reservoir has been withdrawn from mineral location and entry since Jan. 3, 1975.

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Clarence E. Fitzgerald, 55 IBLA 31 (May 28, 1981)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

John C. Farrell, 55 IBLA 42 (May 28, 1981)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal, where the location notice describes additional or new land not contained in the original location.

Lairy D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Under the "equal-footing" doctrine, a state has title to lands beneath its navigable rivers, and this Board has no jurisdiction to determine the validity of such riverbed mining claims asserted under state law. However, where an unpatented mining claim is filed for record with the Bureau of Land Management pursuant to the Federal mining law and the public records disclose that all public lands embraced in the claim had been withdrawn from mining location before the claimant located the mining claim, the filing is properly rejected by BLM and the claim declared null and void ab initio.

Gary Willis, 56 IBLA 217 (July 22, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws for an Indian reservation is null and void ab initio.

Steve Foster, Elmer Brewster, 56 IBLA 282 (July 28, 1981)

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

United States v. D. J. Polashek, 57 IBLA 104 (Aug. 25, 1981)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Mining claims located on land previously withdrawn from mineral entry are null and void ab initio. However, where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment to a previous location or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. M. Polk, Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

Failure to substantially comply with the requirements to annually perform assessment work on a claim which is located on withdrawn land results in a forfeiture of that claim to the United States.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

Richard Thorpe, Anne Thorpe, 59 IBLA 176 (Oct. 26, 1981)

Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claims must be tested by the value of the mineral deposit as of the date of withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Leon Noyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands, where the filing is regular on its face, segregates the lands from all subsequent appropriation, including location and entry under the mining laws and a millsite located while the land is so segregated is null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

Mining claims partially located on land withdrawn from such entry are null and void ab initio to the extent of the encroachment, and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry.

Kelly R. Healy, 60 IBLA 115 (Nov. 20, 1981)

MINING CLAIMS RIGHTS RESTORATION ACT

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. R. James Steward, 54 IBLA 67 (Apr. 10, 1981)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a mining claim on land withdrawn for power development or powersites, where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. Robert A. Pettigrew, 54 IBLA 149 (Apr. 17, 1981) 88 I.D. 453

A mining claim located after Aug. 11, 1955, is properly declared null and void ab initio when at the time of location the claim is located on lands withdrawn for power development or powersites and such lands are under examination and survey by a prospective licensee of the Federal Power Commission under an uncanceled preliminary permit. This preliminary permit, issued under the Federal Power Act and authorizing the prospective licensee to conduct its examination and survey, may not have been renewed in the case of such prospective licensee more than once.

Robert A. Pettigrew, 54 IBLA 257 (Apr. 28, 1981)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

John C. Farrell, 55 IBLA 42 (May 28, 1981)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Larry D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

MISTAKES

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)

MULTIPLE MINERAL DEVELOPMENT ACT

(See also Hearings, Mining Claims--if included in this Index.)

GENERALLY

No mining claim located after the effective date of the Multiple Mineral Development Act can be adverse to any prospecting permit for coal or phosphate. No such claim renders the land unavailable for a prospecting permit for coal or phosphate under the restriction of prospecting permits to lands which are "unclaimed, undeveloped."

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits and Preference Right Leases for Coal and Phosphate (Modifying Solicitor's Opinion M-36893 of Aug. 2, 1977, and its Supplement of Nov. 19, 1979, upon the same subject): The "Unclaimed, Undeveloped" Issue, M-36893 (Supp. II) (Jan. 8, 1981)

88 I.D. 247

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

(See also Environmental Policy Act--if included in this Index.)

ENVIRONMENTAL STATEMENTS

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Sierra Club et al., 57 IBLA 79 (Aug. 21, 1981)

An appeal seeking review of an informational BLM handout containing a proposal for various land uses because the proposal was made without the filing of an Environmental Impact Statement will be dismissed where the document in question implements no policy or action, does not adversely affect appellant, and where it appears that an EIS is being, or will be prepared in connection with any BLM recommendations or reports based on land use proposals for the Coos Bay District, as required by the National Environmental Policy Act of 1969.

Cascade Holistic Economic Consultants and Oregon Wilderness Coalition, 58 IBLA 332 (Oct. 16, 1981)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--ContinuedENVIRONMENTAL STATEMENTS--Continued

Where after completion of a final environmental statement covering the Josephine Sustained Yield Unit 10-year Timber Management Plan, the State Director issues a decision implementing one of the alternatives in the EIS, an appeal disagreeing with certain portions of the EIS will be duly considered with regard for the public interest. However, where appellants seek to have their judgment substituted for that of the decisionmaker, the decisionmaker's action will ordinarily be affirmed in the absence of a showing of compelling reason for modification or reversal.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

NATIONAL PARK SERVICE

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Dec. 30 of each year, as required by Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

W. LeRoy Ewell, 58 IBLA 121 (Sept. 24, 1981)

Riter Ekker, Kerry B. Ekker, 58 IBLA 251 (Oct. 6, 1981)

Pursuant to sec. 314 of FLPMA and 43 CFR 3833.2-1(b), the owner of unpatented mining claims situated within any unit of the National Park System must file in the proper office of BLM a notice of intention to hold the claims on or before Dec. 30 of each year following the year in which the claims were recorded with the National Park Service as required by the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), and 36 CFR 9.5. Where a permit to do assessment work has been issued by NPS, the owner of the claims may file evidence of assessment work in lieu of the notice of intention to hold the claims. Failure to file either a notice of intention to hold the unpatented mining claims or evidence of assessment work with the proper BLM office within the time period prescribed conclusively constitutes abandonment of the claims.

Uranus, Inc., 58 IBLA 139 (Sept. 25, 1981)

NATIONAL PARK SERVICE AREASGENERALLY

A noncompetitive oil and gas lease offer for acquired land within the boundaries of the Fort Laramie National Historic Site administered by the National Park Service is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes lands within national parks or monuments from its terms.

Ed Fendleton, 57 IBLA 146 (Aug. 25, 1981)

NOTICEGENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Melart, Inc., 52 IBLA 5 (Jan. 5, 1981)

Dale E. Hopkins, 52 IBLA 9 (Jan. 5, 1981)

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

Joe Bastone, 52 IBLA 288 (Feb. 9, 1981)

Lowell L. Patten, 52 IBLA 299 (Feb. 10, 1981)

Coronado Oil Co., 52 IBLA 308 (Feb. 10, 1981)

L. L. Falter, John F. Weeks, 52 IBLA 313 (Feb. 10, 1981)

James C. Prebelich, 53 IBLA 34 (Feb. 26, 1981)

W. Keith Howard, 53 IBLA 92 (Mar. 2, 1981) 88 I.L. 341

St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981)

Clyde W. Luke, Betty J. Luke, 53 IBLA 136 (Mar. 9, 1981)

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

John Flutt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Joseph Cjurovich, 54 IBLA 100 (Apr. 15, 1981)

Bill C. Ross, 54 IBLA 116 (Apr. 16, 1981)

Charles W. McGowan III, 54 IBLA 119 (Apr. 16, 1981)

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

James W. Cuakenbush, 54 IBLA 155 (Apr. 21, 1981)

Dell Warren, 54 IBLA 159 (Apr. 21, 1981)

William L. Schindler, 54 IBLA 221 (Apr. 23, 1981)

Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

William Adolph Vonkee et al., 54 IBLA 232 (Apr. 27, 1981)

William M. Hand, 54 IBLA 303 (Apr. 29, 1981)

Sidney Hodges, John Golden, 55 IBLA 17 (May 26, 1981)

Earl Kremiller, 55 IBLA 28 (May 27, 1981)

Joe Benham, 55 IBLA 45 (May 29, 1981)

Betty L. Henry, 55 IBLA 47 (May 29, 1981)

Vincent M. D'Amico, Wolt C. Stempel, 55 IBLA 116 (June 3, 1981)

--Continued

NOTICE--Continued

GENERALLY--Continued

Mart I. Gilmore, 55 IBLA 128 (June 3, 1981)
Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)
Alberta K. Romero, 55 IBLA 140 (June 4, 1981)
Joseph Ojurovich, 55 IBLA 182 (June 15, 1981)
W. LeGrande Law, 55 IBLA 193 (June 16, 1981)
Thomas Williams, 56 IBLA 55 (July 10, 1981)
Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)
Walter D. Cosdon, 56 IBLA 112 (July 16, 1981)
Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (July 20, 1981)
Rolland Marshall, 56 IBLA 187 (July 20, 1981)
Allen Turner, 56 IBLA 280 (July 28, 1981)
Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)
Fred W. Croxen III, 56 IBLA 318 (July 29, 1981)
Caroline E. Brown, 56 IBLA 334 (July 30, 1981)
Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)
Estate of Mary B. Ritchie, 56 IBLA 361 (Aug. 3, 1981)
Edith Gion, 56 IBLA 375 (Aug. 3, 1981)
Lela J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)
Norman L. Moon, 57 IBLA 1 (Aug. 5, 1981)
Dave R. Newman, 57 IBLA 23 (Aug. 6, 1981)
Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)
L. Grace Wadsworth, 57 IBLA 242 (Aug. 27, 1981)
Intermountain Exploration Co., 57 IBLA 271 (Aug. 31, 1981)
Intermountain Exploration Co., 57 IBLA 274 (Aug. 31, 1981)
Del Rupp, 57 IBLA 297 (Aug. 31, 1981)
L. M. Pern, 57 IBLA 339 (Sept. 1, 1981)
Virgie Dowler, 57 IBLA 389 (Sept. 10, 1981)
Steven V. Miskoff, 58 IBLA 32 (Sept. 16, 1981)
James N. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)
Donald Jardine, 58 IBLA 49 (Sept. 21, 1981)
Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)
Fabey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)
Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)
Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)
Tom Appleyarth, 58 IBLA 224 (Sept. 30, 1981)
Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)
Richard W. Thom, 58 IBLA 291 (Oct. 13, 1981)
Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)

NOTICE--Continued

GENERALLY--Continued

Lee R. Newson, 58 IBLA 325 (Oct. 16, 1981)
Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)
Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)
Ben M. Powell III, 59 IBLA 146 (Oct. 26, 1981)
Bruce A. DeRosier, 59 IBLA 283 (Oct. 30, 1981)
John W. Paccus, 59 IBLA 288 (Oct. 30, 1981)
Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)
Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)
Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)
Dr. Jose Tratal, 60 IBLA 97 (Nov. 19, 1981)
Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)
James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)
Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (Nov. 27, 1981)
Carl P. Andersen, 61 IBLA 4 (Dec. 29, 1981)
Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

William H. Bevis, 52 IBLA 125 (Jan. 13, 1981)
Henri Guzek, 52 IBLA 200 (Jan. 26, 1981)
Kenneth G. Walker, 52 IBLA 214 (Jan. 30, 1981)
Lloyd M. Buttgeriet, 52 IBLA 363 (Feb. 19, 1981)
Robert G. Sunder, Jeanne E. R. Sunder, 52 IBLA 375 (Feb. 19, 1981)
James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)
Clayton V. Curtis, 54 IBLA 184 (Apr. 22, 1981)
D. L. Nielsen, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

A BLM determination disqualifying a first-drawn oil and gas lease offer for an applicant's failure to furnish additional evidence will be set aside where it appears that in unnecessarily mailing the request to

NOTICE--ContinuedGENERALLY--Continued

furnish additional evidence "Restricted Delivery," BLM effectively precluded the communication from reaching the applicant.

Betty Alexander, 53 IBLA 139 (Mar. 9, 1981)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto.

D. E. Bailey, 57 IBLA 120 (Aug. 25, 1981)

Mrs. Walter F. Bolles, 58 IBLA 257 (Oct. 6, 1981)

Eugene M. Goatcher, 58 IBLA 337 (Oct. 19, 1981)

Under the "notation rule," where a reservoir right-of-way affecting certain land is noted on the official records of the Bureau of Land Management, that notation is effective to bar leasing of the oil and gas therein under the Mineral Leasing Act of 1920. This result follows even if the reservoir right-of-way should have been terminated.

RDM Interests, 57 IBLA 163 (Aug. 27, 1981)

BLM has satisfied its burden of giving notice of the inclusion of leased lands in a KGS and of the concomitant increase in annual rental to \$2 per acre or fraction thereof when it notifies the lessees of record, regardless of its failure to notify the holder of operating rights under the lease.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

CONSTRUCTIVE NOTICE

In the absence of evidence of actual knowledge that a lease offer was made in violation of the regulations, reliance by an assignee of the lease on the Bureau of Land Management decision to issue the lease is not unreasonable and will support assignee's claim of bona fide purchaser status where there is no pending inquiry, protest, or appeal proceeding.

David Burr et al., 56 IBLA 225 (July 22, 1981)

Where an authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. 43 CFR 1810.2.

Larry L. Lowenstein, 57 IBLA 95 (Aug. 25, 1981)

OFFICERS AND EMPLOYEES

(See also Federal Employees & Officers--if included in this Index.)

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

OIL AND GAS LEASES

(See also Mineral Leasing Act, Outer Continental Shelf Lands Act--if included in this Index.)

GENERALLY

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Teath Valley National Monument and an offer to lease land within the monument must be rejected.

Fred R. Cerninaro, 52 IBLA 116 (Jan. 13, 1981)

A BLM determination disqualifying a first-drawn oil and gas lease offer for an applicant's failure to furnish additional evidence will be set aside where it appears that in unnecessarily mailing the request to furnish additional evidence "Restricted Delivery," BLM effectively precluded the communication from reaching the applicant.

Betty Alexander, 53 IBLA 139 (Mar. 9, 1981)

The MLA refers only to "gas" or "natural gas" without any qualifying adjectives, thus supporting a nonrestrictive reading of those terms to include coalbed gas. Coalbed gas is leasable under the oil and gas leasing provision of the MLA, 30 U.S.C. § 226 (1976).

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981)

88 I.D. 538

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Jack J. Bender, 54 IBLA 375 (May 19, 1981) 88 I.D. 550

Robert G. Lynn, 60 IBLA 117 (Nov. 24, 1981)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Adjudication of an appeal before the Board of Land Appeals is necessarily based on the information included in the case file. Where there is nothing in the case file to support BLM's basis for rejecting an oil and gas lease offer, BLM's decision rejecting the offer will be reversed.

Patricia B. Amoroso, 55 IBLA 190 (June 16, 1981)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by a bank upon itself, issued by an authorized officer of the bank, and directed to another person. Where a check submitted as a filing fee appears on its face to be a valid cashier's check, a Bureau of Land Management decision refusing such a check will be reversed and the case remanded to BLM.

Eva McGhee, William J. Bott, 55 IBLA 292 (June 26, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Elaine Miller, David Miller, 56 IBLA 7 (June 30, 1981)

Failure of the high bidder at a competitive oil and gas lease sale to execute a lease results in forfeiture of the deposit submitted with the high bid. Refund of the deposit because offeror elects after the sale to withdraw his offer is not allowed.

Howell Spear, 56 IBLA 151 (July 20, 1981)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

John R. Anderson, 57 IBLA 149 (Aug. 25, 1981)

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear showing that the determination was improperly made, nor will the applicable rental be reduced without such showing.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

Ambra Oil and Gas Co., 58 IBLA 67 (Sept. 22, 1981)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fail to comply therewith, the application must be rejected.

Bernard S. Storper, 60 IBLA 67 (Nov. 19, 1981)

Where an appeal from rejection of a simultaneous oil and gas lease offer, it is alleged that the offer designated "J.F.C. Oil & Gas" was actually submitted on behalf of a sole proprietorship, and the drawing entry card does not show the last name, first name, and middle initial of an individual offeror, the lease offeror will be deemed unqualified under 30 U.S.C. § 181 (1976), and the offer not fully executed under 43 CFR 3112.2-1(a) (1979).

J.F.C. Oil and Gas, 60 IBLA 191 (Nov. 27, 1981)

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

William C. Welch, 60 IBLA 248 (Dec. 4, 1981)

Harold R. Leeds, 60 IBLA 383 (Dec. 23, 1981)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

Jeff Co., 61 IBLA 74 (Dec. 31, 1981)

ACQUIRED LANDS LEASES

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Irna Spear, 52 IBLA 360 (Feb. 19, 1981)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Where title to the minerals in a tract of acquired land which is the subject of an oil and gas lease offer cannot be determined from records in the possession of the BLM, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Applicant may be required to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow BLM to determine the

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

status of title to the oil and gas in the tract sought for leasing. Rejection of the offer in the exercise of the Secretary's discretion over leasing is proper where an applicant declines to provide such information.

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

Where a regulation allows land description by legal subdivision, section, township and range, by metes and bounds, and by "tract acquisition numbers," but is insufficiently clear to allow a determination as to when one, rather than another of these methods of description should be used, an oil and gas lease offeror who has described the lands sought by tract acquisition numbers will not be held to have lost his statutory preference right for failure to comply with the regulation if the description afforded is accurate for the purpose.

Walter R. Wilson, Jr., 55 IBLA 96 (June 1, 1981)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Dennis Harris, 55 IBLA 280 (June 25, 1981)

A noncompetitive oil and gas lease offer for acquired land within the boundaries of the Fort Laramie National Historic Site administered by the National Park Service is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes lands within national parks or monuments from its terms.

Ed Pendleton, 57 IBLA 146 (Aug. 25, 1981)

Where an acquired lands noncompetitive oil and gas lease offer is partially rejected on the basis of a recommendation made by the Bureau of Reclamation and merely concurred in by the Forest Service and on appeal the offeror alleges that the present policy of the Bureau of Reclamation is to lease with appropriate stipulations and the record fails to support adequately the original recommendation, the case will be remanded in order to determine whether a lease may issue for such lands.

Esdras K. Hartley, 57 IBLA 293 (Aug. 31, 1981)

ACREAGE LIMITATIONS

The Secretary may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. When the Secretary determines

OIL AND GAS LEASES--Continued

ACREAGE LIMITATIONS--Continued

not to lease a certain area for oil and gas and that determination is based upon considerations of public interest, his exercise of discretion is neither arbitrary nor capricious. Where BLM rejects an isolated 15-acre tract for oil and gas because of its relatively small size, such decision will be reversed as arbitrary and capricious.

Frances H. Rodke, 53 IBLA 98 (Mar. 4, 1981)

APPLICATIONS

Generally

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

Fred R. Cerminaro, 52 IBLA 116 (Jan. 13, 1981)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Where the offeror has failed to submit a signed check for the advance rental within the time allowed, he is properly disqualified to receive the lease.

William H. Bevis, 52 IBLA 125 (Jan. 13, 1981)

A final Departmental appellate decision construing a regulation will be applied with prospective effect only where it materially alters the interpretation given the regulation by earlier administrative decisions and where it would be unfair or prejudicial to apply such decision retroactively.

Killian L. Huger, Jr., 52 IBLA 174 (Jan. 26, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b), and the offeror is required to disclose this interest at the time of filing under 43 CFR 3102.7

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

Where no application for BLM's approval of a transfer of any interest in an offer and lease (if

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

issued) has ever been filed, BLM should issue the lease, if appropriate, to the offeror only.

The regulations controlling transfer of oil and gas interests were amended on June 16, 1980, and the amended regulations govern where the interest holder has not sought approval of a transfer of his interest prior to this date. Under these amended regulations, BLM cannot consider any application for approval of a transfer of a lease interest until after the lease is issued.

Estate of Glenn F. Coy, Resource Service Co., Inc.,
52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Irma Spear, 52 IBLA 360 (Feb. 19, 1981)

A protest against the validity of a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) on the grounds that the DEC was signed by someone other than the offeror and that no power of attorney was filed is properly dismissed where the record indicates that the offeror's wife signed the card for him as his amanuensis, in the absence of a clear showing by the protestant that the wife was the offeror's "agent" (1-8-2), was invested with discretionary authority to act for the offeror instead. This is because a copy of a power of attorney or agency statements are not required to be filed when the person affixing the offeror's signature on the DEC is not his agent or attorney-in-fact.

The mere fact that a DEC is signed by someone other than the offeror does not necessarily mean that the person affixing the signature has an interest in the offer which must be disclosed.

An oil and gas lease offeror is not required to disclose the existence of any interests in the offer flowing to his wife on account of community property laws of any state.

John W. Bierlein, 53 IBLA 48 (Feb. 27, 1981)

A drawing entry card which is not properly dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected.

Olga M. Pullis, 53 IBLA 55 (Feb. 27, 1981)

The fact that an offeror signed an uncompleted oil and gas lease offer form which was subsequently completed by a duly authorized agent does not establish ground for rejection of the offer.

Phillip A. Kulin, 53 IBLA 57 (Feb. 27, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The naming of an additional party in interest on the reverse side of the drawing entry card is prima facie evidence that the named person is in fact an interested party within the ambit of 43 CFR 3102.7. However, it is not within the province of the Department of the Interior to determine the unstated intentions of the offeror as to how and when the right of an interested party will vest.

William B. Price, 53 IBLA 174 (Mar. 16, 1981)

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer pursuant to 43 CFR 3112.5-2, except in special circumstances not herein present.

Petroleum Shares, Inc., 53 IBLA 254 (Mar. 19, 1981)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent. Pursuant to 43 CFR 3130.2-1, rentals are not properly prorated for any lands in which the United States owns an undivided fractional interest, but shall be payable at the same rate as provided for the full acreage in such lands.

A noncompetitive oil and gas lease offer filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

Thomas F. Keating, 53 IBLA 349 (Mar. 30, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field.

William M. Turner, 54 IBLA 111 (Apr. 15, 1981)

P. M. Braun, 60 IBLA 246 (Dec. 4, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981)
88 I.D. 479

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace K. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

The Department is not estopped from rejecting an oil and gas lease offer, or canceling a lease issued pursuant thereto, because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

are subject to reversal on review at the Secretarial level.

Indexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Strict compliance with 43 CFR 3112.2-1 which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent is required.

A simultaneous oil and gas lease offer is properly rejected where the State prefix to the parcel number on an oil and gas drawing entry card is omitted.

Marilyn K. Weiss, 54 IBLA 324 (Apr. 30, 1981)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer.

Ken Wiley, 54 IBLA 367 (May 18, 1981)

Where an applicant fails to file five copies of a noncompetitive over-the-counter lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, the offer must be rejected. However, when the additional required copy of the lease offer is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of the filing of the additional copy with the BLM.

Curtis Wheeler, 55 IBLA 65 (May 29, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Vincent M. D'Amico, Wolt C. Stempel, 55 IBLA 116 (June 3, 1981)

Simon A. Rife, 56 IBLA 378 (Aug. 3, 1981)

Ben M. Powell III, 59 IBLA 146 (Oct. 26, 1981)

Dr. Jose Trabal, 60 IBLA 97 (Nov. 19, 1981)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Alvyn G. Novotny, 55 IBLA 196 (June 16, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is dated more than 10 days prior to the beginning of the filing period.

H. L. McCarroll, 55 IBLA 215 (June 18, 1981)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas offer filed for such land must be rejected. Even where the record is unclear whether the conflicting outstanding lease in question has been extended by drilling or whether it has expired at the end of its term, the land is still not available for the filing of new over-the-counter offers until it first has been posted by BLM as open to the filing of simultaneous offers.

Curtis D. Wheeler, 55 IBLA 278 (June 25, 1981)

Where the rental payment accompanying a noncompetitive oil and gas lease offer is deficient by \$3, less than 10 percent, and Bureau of Land Management requests submission of the deficient rental along with execution of special stipulations, within 30 days, BLM may properly reject the lease offer when the additional rental is not submitted within the 30 days, although signed stipulations were timely submitted.

Dean W. Rowell, 55 IBLA 301 (June 26, 1981)

When an applicant for assignment of an oil and gas lease fails to submit a certification of new qualifications to hold an oil and gas lease, it is proper to reject the application for assignment. Such an application may be reinstated where the applicant has provided the required certification on appeal and no third party rights are involved.

Jane Ray Dietrich, 55 IBLA 380 (June 29, 1981)

Regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them.

W. W. Priest, Michael Manduca, 55 IBLA 398 (June 30, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the secretarial level. Such reversal upon Departmental review does not constitute retrospective application of a new rule.

Richard E. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

Strict compliance with 43 CFR 3112.2-1 (1979) which provided that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent is required. A simultaneous oil and gas lease offer on an Eastern States parcel is properly rejected where the "ES" prefix to the parcel number on the oil and gas drawing entry card is omitted even though the state name is spelled out.

C. H. Coster Gerard, 56 IBLA 17 (June 30, 1981)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Thomas Connell, 56 IBLA 23 (June 30, 1981)

A simultaneous oil and gas lease offer is properly rejected if the drawing entry card is not received by the deadline specified in the notice announcing the filing period.

Derrick Fuller, 56 IBLA 33 (July 8, 1981)

Where an oil and gas lease offeror is directed to "return" rather than "file" a document within a prescribed period of time, where the offeror deposits the document in the mail before the end of the specified period, and where the document is received within a reasonable period of time later, BLM may not properly reject the offer.

Carci Dolezal, 56 IBLA 52 (July 8, 1981)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

It is proper for the Bureau of Land Management to reject an oil and gas lease offer filed over the counter for land formerly included in a lease which expired at the end of its term or terminated automatically for nonpayment of rental because under 43 CFR 3112.1-1 such land is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

Curtis Wheeler, 56 IBLA 58 (July 10, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest (which, by its own terms, does not apply to the service agreement) with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level, and where there was no affirmative misconduct by BLM employees.

Alex Sachse, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Semanko, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

Where a personal secretary who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs a drawing entry card as an "agent" of the offeror, he is not an agent within the meaning of 43 CFR 3102.2-6(a) and thus is not required to file an agency statement.

Kathleen L. Anderson, 56 IBLA 214 (July 22, 1981)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be canceled and to show that they acquired their interests as bona fide purchasers.

A. D. Matchett, 56 IBLA 231 (July 22, 1981)

Where the Bureau of Land Management requires the submission of additional evidence of qualifications by a simultaneous oil and gas lease applicant and where the applicant asserts that both the original form properly executed and a copy of the executed form were returned timely, but BLM finds only the copy in its files, the copy is acceptable evidence and a decision rejecting the application will be reversed.

The FMC & PLIM Corp., 56 IBLA 240 (July 22, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Edward Marcinko, 56 IBLA 289 (July 28, 1981)

Robert D. Alexander, Paul D. Kennett, 59 IBLA 118 (Oct. 26, 1981)

Joan S. Maguire, 59 IBLA 130 (Oct. 26, 1981)

Jake Huebert, 59 IBLA 179 (Oct. 27, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Floyd O. Lochner, 56 IBLA 271 (July 28, 1981)

An oil and gas lease drawing entry card is properly rejected under 43 CFR 3112.2-1(b) (1980) where it is not signed holographically (manually) by the applicant or by someone authorized to sign on her behalf. BLM is not barred from rejecting the offer either by its acceptance of applicant's filing fee or by its publishing of applicant's name as the first drawee.

Betty J. Thomas, 56 IBLA 323 (July 29, 1981)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether offeror is qualified, the offer is properly rejected.

Judith Gail Bell, 57 IBLA 139 (Aug. 25, 1981)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Charles H. Whitlock, 57 IBLA 252 (Aug. 28, 1981)

An application drawn first in a simultaneous drawing which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

It is not permitted to file a simultaneous noncompetitive lease application bearing both the names of an association and of an individual. Where an individual intends to submit an application on behalf of the partnership, he should list its name alone on the application and sign the card as its authorized agent.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Stephen A. Pitt, L.E.P. Investments, 57 IBLA 365 (Sept. 8, 1981)

Where an oil and gas lease offer, unaccompanied by statements as required by D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), was filed prior to Nov. 9, 1978, the Pack holding will not retroactively be applied to the offer.

Cleo Chapekis, 57 IBLA 398 (Sept. 14, 1981)

--Continued

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Patricia Ann DeSalvo, 58 IBLA 1 (Sept. 15, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to a valid previously filed offer, where it subsequently issues a second conflicting lease for the same lands to the senior offeror, and where the junior lease has not been assigned to a bona fide purchaser, BLM's decision canceling the lease issued to the senior offeror will be vacated, because the statute governing oil and gas leasing of non-KGS lands dictates that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981)

A simultaneous noncompetitive oil and gas lease application which is not dated is properly rejected.

Jerry R. Smith, 58 IBLA 232 (Oct. 6, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

Clyde K. Kobbeman, 58 IBLA 268 (Oct. 8, 1981)

88 I.D. 915

Janet A. Rodgers, 58 IBLA 275 (Oct. 8, 1981)

Herbert Rothschild, 59 IBLA 140 (Oct. 26, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

A first-drawn application that is defective because of noncompliance with 43 CFR 3112.2 cannot be cured by submission of additional information after the drawing.

Herman Birnbaum, 58 IBLA 279 (Oct. 8, 1981)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing might adversely affect the Mexican desert bighorn sheep or its habitat, that animal being a State of New Mexico endangered species and the subject of a cooperative agreement between the State and BLM made pursuant to sec. 2 of the Act of Oct. 18, 1974, 16 U.S.C. § 670g (1976).

Placid Oil Co. et al., 58 IBLA 294 (Oct. 14, 1981)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

Where Bureau of Land Management rejects a simultaneous oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, but a question remains as to the applicant's compliance with 43 CFR 3102.2-5(b), the Bureau of Land Management decision will be vacated and the case remanded for further action.

Black Jack Oil Co., 59 IBLA 163 (Oct. 26, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby, when the individual sells a lease acquired during his participation in the program, the proceeds from the sale of that lease will be deposited into the Lease Sales Escrow Account; and 49 percent of any consideration received by the individual shall be assigned to the leasing service should the individual dispose of his interest in a lease in any manner other than by sale, the leasing service does not have an enforceable right to share in the proceeds of any sale or any interest therein. Such an agreement does not create for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

"Interest." Where there is an agreement giving an individual the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b) (1979).

Harry S. Hills et al., 59 IBLA 241 (Oct. 28, 1981)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Joe Conway, 59 IBLA 314 (Nov. 4, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. Neither the fact that the noncompetitive offeror followed all of the applicable rules and regulations in making its offer nor the fact that the Bureau of Land Management delayed in getting a report from Geological Survey regarding the known geologic structure determination vitiates this conclusion.

George Reddy & Associates, 59 IBLA 359 (Nov. 9, 1981)

An applicant for a simultaneous oil and gas lease who is legally a minor at the time he executes and files the application is not qualified to hold a lease under the regulations, and the application is properly rejected.

Scott Q. Adams, 60 IBLA 288 (Dec. 17, 1981)

88 I.D. 1110

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

An entitlement to share in the proceeds from the sale of a lease or part thereof, contingent upon the lease being sold, is an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

Rosita Trujillo, 60 IBLA 316 (Dec. 18, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Juanita H. Mayer, 60 IBLA 391 (Dec. 23, 1981)

Where an applicant for a noncompetitive oil and gas lease submits probative evidence opposing the determination by the Geological Survey that certain lands are within the known geologic structure, a hearing will be ordered so that a complete record may be developed.

Daniel A. Engelhardt, 61 IBLA 65 (Dec. 31, 1981)

Amendments

Where an over-the-counter noncompetitive oil and gas lease offer is filed by a corporation unaccompanied by a statement of its qualifications or a reference by serial number to the record in which it has been filed, and such defect is remedied prior to the filing of any junior offer, such offer may be considered with priority as of the date the curative information is filed.

Century Oil and Gas Corp., 58 IBLA 227 (Sept. 30, 1981)

Attorneys-in-Fact or Agents

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

Killian L. Huger, Jr., 52 IBLA 174 (Jan. 26, 1981)

A protest against the validity of a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) on the grounds that the DEC was signed by someone other than the offeror and that no power of attorney was filed is properly dismissed where the record indicates that the offeror's wife signed the card for him as his amanuensis, in the absence of a clear showing by the protestant that the wife was

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

the offeror's "agent" (i.e., was invested with discretionary authority to act for the offeror) instead. This is because a copy of a power of attorney or agency statements are not required to be filed when the person affixing the offeror's signature on the DEC is not his agent or attorney-in-fact.

John W. Bierlein, 53 IBLA 48 (Feb. 27, 1981)

Where a drawing entry card filed before June 16, 1980, is signed by the offeror but completed by an agent or attorney-in-fact, the separate signed statements by the attorney-in-fact or agent required by the pertinent regulation, 43 CFR 3102.6-1(a)(2), need not be filed.

Frank K. Mayers, 53 IBLA 53 (Feb. 27, 1981)

An oil and gas lease offer signed by the offeror personally need not be accompanied by statements pursuant to 43 CFR 3102.6-1 (1979) although it is submitted through a filing service.

The fact that an offeror signed an uncompleted oil and gas lease offer form which was subsequently completed by a duly authorized agent does not establish ground for rejection of the offer.

An oil and gas lease offeror's agreement with a filing service which by its terms gives an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Phillip A. Kulip, 53 IBLA 57 (Feb. 27, 1981)

43 CFR 3102.6-1 sets forth the statements and evidence required when an attorney-in-fact or agent signs a simultaneous oil and gas lease drawing entry card on behalf of the applicant. Where an offer is signed and completed by a father acting as agent for his son, and where the father advises the son as to the selection of the parcel, the applicant cannot be considered "qualified" and the offer to lease drawn with first priority accepted, unless the statements required by 43 CFR 3102.6-1 have been filed with the drawing entry card.

W. Keith Howard, 53 IBLA 92 (Mar. 2, 1981) 88 I.D. 341

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Carolyn W. Laeser, 53 IBLA 336 (Mar. 26, 1981)

D. R. Gallagher, 54 IBLA 72 (Apr. 13, 1981)

J. Eugene Meyer, 57 IBLA 124 (Aug. 25, 1981)

Arthur J. Messbauer, 59 IBLA 173 (Oct. 26, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Vincent M. P'Amico, Wolt C. Stempel, 55 IBLA 116 (June 3, 1981)

Simon A. Rife, 56 IBLA 378 (Aug. 3, 1981)

Ben M. Powell III, 59 IBLA 146 (Oct. 26, 1981)

Dr. Jose Tratal, 60 IBLA 97 (Nov. 19, 1981)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Alvyn G. Novotny, 55 IBLA 196 (June 16, 1981)

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

John Walter Starks, 55 IBLA 266 (June 25, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Edward Marcinko, 56 IBLA 289 (July 28, 1981)

Robert D. Alexander, Paul D. Kennett, 59 IBLA 118 (Oct. 26, 1981)

Jake Huebert, 59 IBLA 179 (Oct. 27, 1981)

Where a drawing entry card to lease a parcel of land for oil and gas was prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent were required to be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Cleo Chapekis, 57 IBLA 398 (Sept. 14, 1981)

Patricia Ann DeSalvo, 58 IBLA 1 (Sept. 15, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Under 43 CFR 3102.2-1, a simultaneous oil and gas lease applicant may file for reference the statement of qualifications of his agent required by 43 CFR 3102.2-6 in any Bureau of Land Management office. Upon acceptance of the filing by BLM and assignment of a serial number, the applicant may properly reference the serial number on future oil and gas applications filed with any BLM office in lieu of resubmitting the statement.

Pursuant to 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be manually signed in ink either by the applicant or someone authorized to sign on behalf of the applicant. Where applicant's agent has typed the applicant's name and manually signed as agent, the application conforms to the regulations.

R. Hugo C. Cotter, 58 IBLA 145 (Sept. 25, 1981)
88 I.D. 870

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

Clyde K. Kobbeman, 58 IBLA 268 (Oct. 8, 1981)
88 I.D. 915

Janet A. Rodgers, 58 IBLA 275 (Oct. 8, 1981)

Herbert Rothschild, 59 IBLA 140 (Oct. 26, 1981)

An agent's failure to ensure that an oil and gas lease application is properly dated provides no basis for accepting the offer because such action would prejudice the rights of others who properly executed their applications.

Grace Grant, 58 IBLA 366 (Oct. 20, 1981)

"Interest." Where there is an agreement giving an individual the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b) (1979).

Harry S. Hills et al., 59 IBLA 241 (Oct. 28, 1981)

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only three initials and the name of the corporation, and the application is properly rejected.

Charles Goodrich, 60 IBLA 25 (Nov. 16, 1981)

Under the regulations in effect prior to June 16, 1980, where a drawing entry card bears a facsimile of the offeror's signature which was affixed by a printing service acting as an amanuensis, and where no agency statement was filed, the validity of the offer may turn on whether the printer was acting as an amanuensis for the offeror or for his agent, since an agency statement is required only where the agent (or his instrumental-ity) affixes the facsimile of the offeror's signature on the drawing entry card. Where the record is unclear

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

as to this fact, the matter will be referred to the Hearings Division for a hearing.

Norman Chodosh, 60 IBLA 260 (Dec. 14, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed on the application are left unanswered. An incomplete application must be rejected, regardless of whether the desired information was indicated on an attachment or in other documents on file.

A simultaneous oil and gas lease application filed on behalf of a joint venture must be rejected if it is signed only by an individual member with no proper reference to the name of the joint venture or other members thereof.

James E. Webb, 60 IBLA 323 (Dec. 18, 1981)

Description

"Smallest legal subdivision." Where an oil and gas lease offer is made, the smallest legal subdivision which may be encompassed by the offer is a quarter-quarter section (40 acres), unless the offer is for a lot in a fractional section.

A noncompetitive oil and gas lease offer filed for land included in an approved protraction diagram must include an entire section described according to the section, township, and range shown on the approved protraction survey. Offers may include less than an entire section only where a portion of the section is available, and then the offer must describe all the available land by subdivisional parts.

Gary E. Strong, 57 IBLA 306 (Aug. 31, 1981)

Drawings

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Where the offeror has failed to submit a signed check for the advance rental within the time allowed, he is properly disqualified to receive the lease.

William H. Evis, 52 IBLA 125 (Jan. 13, 1981)

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

Killian L. Huger, Jr., 52 IBLA 174 (Jan. 26, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by a bank upon itself, issued by an authorized officer of the bank, and directed to another person. Where a check submitted as a filing fee appears on its face to be a valid cashier's check, a Bureau of Land Management decision refusing such a check will be reversed and the case remanded to BLM.

Oxy Petroleum, Inc., 52 IBLA 239 (Feb. 6, 1981)

Frank H. Gower, Jr., 53 IBLA 146 (Mar. 9, 1981)

A protest against the validity of a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) on the grounds that the DEC was signed by someone other than the offeror and that no power of attorney was filed is properly dismissed where the record indicates that the offeror's wife signed the card for him as his amanuensis, in the absence of a clear showing by the protestant that the wife was the offeror's "agent" (*i.e.*, was invested with discretionary authority to act for the offeror) instead. This is because a copy of a power of attorney or agency statements are not required to be filed when the person affixing the offeror's signature on the DEC is not his agent or attorney-in-fact.

The mere fact that a DEC is signed by someone other than the offeror does not necessarily mean that the person affixing the signature has an interest in the offer which must be disclosed.

An oil and gas lease offeror is not required to disclose the existence of any interests in the offer flowing to his wife on account of community property laws of any state.

John W. Bierlein, 53 IBLA 48 (Feb. 27, 1981)

Where a drawing entry card filed before June 16, 1980, is signed by the offeror but completed by an agent or attorney-in-fact, the separate signed statements by the attorney-in-fact or agent required by the pertinent regulation, 43 CFR 3102.6-1(a)(2), need not be filed.

Frank K. Mayers, 53 IBLA 53 (Feb. 27, 1981)

A drawing entry card which is not properly dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected.

Olga M. Puglis, 53 IBLA 55 (Feb. 27, 1981)

The fact that an offeror signed an uncompleted oil and gas lease offer form which was subsequently completed by a duly authorized agent does not establish ground for rejection of the offer.

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Phillip A. Kulin, 53 IBLA 57 (Feb. 27, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

43 CFR 3102.6-1 sets forth the statements and evidence required when an attorney-in-fact or agent signs a simultaneous oil and gas lease drawing entry card on behalf of the applicant. Where an offer is signed and completed by a father acting as agent for his son, and where the father advises the son as to the selection of the parcel, the applicant cannot be considered "qualified" and the offer to lease drawn with first priority accepted, unless the statements required by 43 CFR 3102.6-1 have been filed with the drawing entry card.

W. Keith Howard, 53 IBLA 92 (Mar. 2, 1981) 88 I.D. 341

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches *eo instante*.

Robert E. Bergman and Evan V. Bergman, 53 IBLA 122 (Mar. 5, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes the priority of filing. The offeror is not justified in relying on the expected issuance of a lease.

Richard J. DiMarco, 53 IBLA 130 (Mar. 5, 1981)

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer pursuant to 43 CFR 3112.5-2, except in special circumstances not herein present.

Petroleum Shares, Inc., 53 IBLA 254 (Mar. 19, 1981)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Carolyn W. Laeser, 53 IBLA 336 (Mar. 26, 1981)

D. R. Gallagher, 54 IBLA 72 (Apr. 13, 1981)

J. Eugene Meyer, 57 IBLA 124 (Aug. 25, 1981)

Arthur J. Messbauer, 59 IBLA 173 (Oct. 26, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to meet the \$10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Orderly administration of the oil and gas leasing program demands that filing fees be paid to BLM in a manner consonant with administrative convenience and in accordance with the regulations. This necessarily requires that BLM cannot, without prior written instruction, transfer money paid for one purpose to another use, et al., money paid for one month's simultaneous drawing to another month's simultaneous drawing.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

"Interest in an oil and gas lease or offer."
Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Where a party to a pooling agreement is authorized to advance funds for filing drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor and receive a consultation fee from the pooled proceeds of the sale or assignment of any lease issued, the filing in a lease drawing for a particular parcel by more than one party to the agreement constitutes a multiple filing in violation of 43 CFR 3112.5-2.

Vickie J. Landis, 54 IBLA 25 (Apr. 6, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing; and where, at the time it consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the DEC, provided that the purchaser had no actual knowledge of any defect in the DEC.

An undated DEC lease offer is defective and must be rejected.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing, or in prospect; and where, at the time it consummated the agreement by payment of consideration, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

the purchaser had no actual knowledge of any defect in the offer or the resultant lease.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Strict compliance with 43 CFR 3112.2-1 which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent is required.

A simultaneous oil and gas lease offer is properly rejected where the State prefix to the parcel number on an oil and gas drawing entry card is omitted.

Marilyn K. Weiss, 54 IBLA 324 (Apr. 30, 1981)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit the advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, notwithstanding the fact that at the time of the notice the Secretary had suspended the Bureau of Land Management's authority to issue noncompetitive oil and gas leases until further notice. However, if the first-drawn applicant files a notice of appeal within that time period, the time period is suspended and following affirmation of Bureau of Land Management's decision, the first-drawn applicant is properly given the entire time period from receipt of the Board's decision within which to submit the rental.

Robert A. Shryock, Jas. O. Breene, Jr., 55 IBLA 74 (June 1, 1981)

A Traveler's Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1980), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Michaela M. Fitzpatrick, George M. Fitzpatrick, 55 IBLA 108 (June 1, 1981)

A party who purchased a first-drawn simultaneous noncompetitive DEC lease offer under authority of a regulation then in effect, is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is dated more than 10 days prior to the beginning of the filing period.

Failure to complete properly information required on a simultaneous oil and gas lease drawing entry card renders the card defective and requires rejection of the offer based upon the mandatory requirements in 43 CFR 3112.2-1(a) (1979) that the card be "signed and fully executed." This requirement is strictly applied and, therefore, a date on the card 2 years prior to the filing, even though resulting from inadvertent error, renders the card defective.

H. L. McC Carroll, 55 IBLA 215 (June 18, 1981)

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

John Walter Starks, 55 IBLA 266 (June 25, 1981)

A party which purchased a first-drawn simultaneous noncompetitive DEC lease is a bona fide purchaser of this interest where, throughout the time during which it agreed to purchase the offer, paid consideration, and formally requested approval of the assignment, BLM's case records indicated that BLM had resolved a question about the validity of the offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser had no actual knowledge of any defect in the offer.

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

Charles J. Rydzewski, 55 IBLA 373 (June 29, 1981)
88 I.D. 625

George W. Metz, 56 IBLA 97 (July 15, 1981)

Robert L. Andersen et al., 56 IBLA 182 (July 20, 1981)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by the issuing bank upon itself, signed by an authorized employee of the bank, and payable to another person.

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

Where a check submitted as a filing fee appears to meet these criteria on its face, it will be considered the equivalent of a cashier's check.

A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

John L. Messinger, Norris C. Delamore, Jr., 56 IBLA 1 (June 30, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

Strict compliance with 43 CFR 3112.2-1 (1979) which provided that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent is required. A simultaneous oil and gas lease offer on an Eastern States parcel is properly rejected where the "ES" prefix to the parcel number on the oil and gas drawing entry card is omitted even though the state name is spelled out.

C. H. Coster Gerard, 56 IBLA 17 (June 30, 1981)

A simultaneous oil and gas lease offer is properly rejected if the drawing entry card is not received by the deadline specified in the notice announcing the filing period.

Derrick Fuller, 56 IBLA 33 (July 8, 1981)

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the \$10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Allen W. Taylor, 56 IBLA 143 (July 20, 1981)

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser of the lease had no actual knowledge of any defect in the underlying offer.

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Where a personal secretary who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs a drawing entry card as an "agent" of the offeror, he is not an agent within the meaning of 43 CFR 3102.2-6(a) and thus is not required to file an agency statement.

Kathleen I. Anderson, 56 IBLA 214 (July 22, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser, is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h) (2) (1976); 43 CFR 3102.1-2.

David Burr et al., 56 IBLA 225 (July 22, 1981)

"Interest in an oil and gas lease or offer."

Where an oil and gas lease offeror in a written agreement gives another person a security interest in any lease issued pursuant to an offer filed under the agreement to secure only payment of lease rentals advanced by that person, that person does not have an interest in the lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

Warren R. Haas, 57 IBLA 247 (Aug. 28, 1981)

An application drawn first in a simultaneous drawing which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

It is not permitted to file a simultaneous noncompetitive lease application bearing both the names of an association and of an individual. Where an individual intends to submit an application on behalf of the partnership, he should list its name alone on the application and sign the card as its authorized agent.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Stephen A. Pitt, L & P Investments, 57 IBLA 365 (Sept. 8, 1981)

Where a drawing entry card to lease a parcel of land for oil and gas was prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent were required to be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Cleo Chapekis, 57 IBLA 398 (Sept. 14, 1981)

Patricia Ann DeSalvo, 58 IBLA 1 (Sept. 15, 1981)

Failure to complete properly information required on a simultaneous oil and gas lease application renders the application defective and requires rejection of the application based upon the mandatory requirements in 43 CFR 3112.2-1. These requirements are strictly applied and, therefore, an affirmative answer to the question on the application concerning the applicant's interest in any other application with respect to the same parcel, even though resulting from inadvertent error, renders the application defective.

Nancy Y. Otani, 58 IBLA 38 (Sept. 17, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 15 days after receipt of a notice that payment was due, as prescribed by 43 CFR 3112.4-1 (1979), disqualification of the offer is automatic.

Arthur Ancowitz, 58 IBLA 112 (Sept. 24, 1981)

A simultaneous noncompetitive oil and gas lease application which is not dated is properly rejected.

Jerry R. Smith, 58 IBLA 232 (Oct. 6, 1981)

A simultaneous oil and gas lease offer is properly rejected where the application is dated prior to the filing period.

An agent's failure to ensure that an oil and gas lease application is properly dated provides no basis for accepting the offer because such action would prejudice the rights of others who properly executed their applications.

Grace Grant, 58 IBLA 366 (Oct. 20, 1981)

Where an offeror submits two drawing entry cards on a parcel, both cards are properly disqualified. It is irrelevant that there may have been actually only one card in the drawing due to ELM's rejection of the other before the drawing, as it is the submission of more than one card per parcel which is prohibited under 43 CFR 3112.2-1(a) (2).

E. J. Kretschmer, 59 IBLA 115 (Oct. 26, 1981)

Where the procedures followed by the Montana State Office in reselecting the priority applications for the July 1980 simultaneous drawing comport with 43 CFR 3112.3-2, the results of the reselection will not be overturned by the Board of Land Appeals.

Margaret G. Pascale, 59 IBLA 124 (Oct. 26, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Joan S. Maguire, 59 IBLA 130 (Oct. 26, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

William C. Revling, 59 IBLA 226 (Oct. 28, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Keith E. Livermore, 59 IBLA 232 (Oct. 28, 1981)

"Interest." Where there is an agreement giving an individual the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b) (1979).

Harry S. Hills et al., 59 IBLA 241 (Oct. 28, 1981)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Joe Conway, 59 IBLA 314 (Nov. 4, 1981)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

Ilean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

Where on appeal from rejection of a simultaneous oil and gas lease offer, it is alleged that the offer designated "J.F.C. Oil & Gas" was actually submitted on behalf of a sole proprietorship, and the drawing entry card does not show the last name, first name, and middle initial of an individual offeror, the lease offeror will be deemed unqualified under 30 U.S.C. § 181 (1976), and the offer not fully executed under 43 CFR 3112.2-1(a) (1979).

J.F.C. Oil and Gas, 60 IBLA 191 (Nov. 27, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed on the application are left unanswered. An incomplete application must be rejected, regardless of whether the desired information was indicated on an attachment or in other documents on file.

A simultaneous oil and gas lease application filed on behalf of a joint venture must be rejected if it is signed only by an individual member with no proper

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

reference to the name of the joint venture or other members thereof.

James E. Webb, 60 IBLA 323 (Dec. 18, 1981)

Where an oil and gas lease applicant files an application with alleged statement of qualifications of a partnership but receives no serial number for the statement of qualifications under the regulation at 43 CFR 3102.2-1(c) and later files an application with no statement of qualifications as required by the regulation at 43 CFR 3102.2-4, the second application must be rejected as incomplete.

Zappia Exploration Group, 60 IBLA 336 (Dec. 22, 1981)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

Jeff Co., 61 IBLA 74 (Dec. 31, 1981)

Filing

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by a bank upon itself, issued by an authorized officer of the bank, and directed to another person. Where a check submitted as a filing fee appears on its face to be a valid cashier's check, a Bureau of Land Management decision refusing such a check will be reversed and the case remanded to BLM.

Oxy Petroleum, Inc., 52 IBLA 239 (Feb. 6, 1981)

Frank H. Gower, Jr., 53 IBLA 146 (Mar. 9, 1981)

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

A copy of a document is not considered to be among the number filed if it is only received and date-stamped and returned to an applicant as evidence of receipt. Such acknowledgement of receipt by Bureau of Land Management personnel does not constitute a determination that the filing was complete or that all the documents recited in the cover letter were included. BLM is not required to retain that copy of the document, contrary to an applicant's instructions, in order to make the filing complete.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where an oil and gas lease offeror makes reference by serial number in its offer to its corporate qualifications which were previously filed in another Bureau of Land Management State Office and such qualifications were on file in that office on the date of the lease offer, the offer may not be rejected because at the time of consideration of the offer the qualifications had been removed from active status without the offeror's knowledge.

ARI-MEX Oil & Exploration, Inc., 53 IBLA 37 (Feb. 26, 1981)

Pursuant to 43 CFR 3112.1-1, all lands which are not within a known geologic structure of a producing oil and gas field and are covered by canceled or relinquished leases, leases which terminated for non-payment of rental or leases which expired by operation of law at the end of their primary or extended terms, are subject to leasing only in accordance with the simultaneous filing system. The Bureau of Land Management has no discretion under the regulations to accept over-the-counter offers for such lands.

John W. Poderick, 53 IBLA 258 (Mar. 19, 1981)

Curtis Wheeler, 54 IBLA 227 (Apr. 27, 1981)

James C. Haggard, 55 IBLA 36 (May 28, 1981)

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to meet the \$10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Orderly administration of the oil and gas leasing program demands that filing fees be paid to BLM in a manner consonant with administrative convenience and in accordance with the regulations. This necessarily requires that BLM cannot, without prior written instruction, transfer money paid for one purpose to another use, e.g., money paid for one month's simultaneous filing to another month's simultaneous drawing.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

Where an applicant fails to file five copies of a noncompetitive over-the-counter lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, the offer must be rejected. However, when the additional required copy of the lease offer is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of the filing of the additional copy with the BLM.

Curtis Wheeler, 55 IBLA 65 (May 29, 1981)

A Traveler's Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1980), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Michaela M. Fitzpatrick, George M. Fitzpatrick, 55 IBLA 108 (June 1, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Alvin G. Novotny, 55 IBLA 196 (June 16, 1981)

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

Charles J. Rydzewski, 55 IBLA 373 (June 29, 1981)
88 I.D. 625

George W. Metz, 56 IBLA 97 (July 15, 1981)

Robert L. Andersen et al., 56 IBLA 182 (July 20, 1981)

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

W. W. Priest, Michael Manduca, 55 IBLA 398 (June 30, 1981)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by the issuing bank upon itself, signed by an authorized employee of the bank, and payable to another person. Where a check submitted as a filing fee appears to meet these criteria on its face, it will be considered the equivalent of a cashier's check.

A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

John L. Messinger, Norris C. Delamore, Jr., 56 IBLA 1 (June 30, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

A drawing entry card not received until after the close of the filing period is invalid even if the delay in delivery is the fault of the postal service.

Derrick Fuller, 56 IBLA 33 (July 8, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the \$10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Allen W. Taylor, 56 IBLA 143 (July 20, 1981)

An oil and gas lease drawing entry card is properly rejected under 43 CFR 3112.2-1(b) (1980) where it is not signed holographically (manually) by the applicant or by someone authorized to sign on her behalf. BLM is not barred from rejecting the offer either by its acceptance of applicant's filing fee or by its publishing of applicant's name as the first drawee.

Betty J. Thomas, 56 IBLA 323 (July 29, 1981)

A simultaneous oil and gas lease offer is properly rejected where the application is dated prior to the filing period.

Grace Grant, 58 IBLA 366 (Oct. 20, 1981)

Where an offeror submits two drawing entry cards on a parcel, both cards are properly disqualified. It is irrelevant that there may have been actually only one card in the drawing due to BLM's rejection of the other before the drawing, as it is the submission of more than one card per parcel which is prohibited under 43 CFR 3112.2-1(a) (2).

F. J. Kretschmer, 59 IBLA 115 (Oct. 26, 1981)

Where Bureau of Land Management rejects a simultaneous oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, but a question remains as to the applicant's compliance with 43 CFR 3102.2-5(b), the Bureau of Land Management decision will be vacated and the case remanded for further action.

Black Jack Oil Co., 59 IBLA 163 (Oct. 26, 1981)

Pursuant to 43 CFR 3112.1-1, all lands which are not within a known geologic structure of a producing oil and gas field and are covered by canceled or relinquished leases, leases which terminated for nonpayment of rental or leases which expired by operation of law at the end of their primary or extended terms, are subject to leasing only in accordance with the simultaneous filing system.

Edna L. Williams, 59 IBLA 196 (Oct. 27, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

William C. Reuling, 59 IBLA 226 (Oct. 28, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only three initials and the name of the corporation, and the application is properly rejected.

Charles Goodrich, 60 IBLA 25 (Nov. 16, 1981)

Although BLM may properly reject a noncompetitive oil and gas lease offer for failure to disclose other parties in interest pursuant to 43 CFR 3102.7 (1979), or because of a multiple filing in violation of 43 CFR 3112.5-2 (1979), such a decision must be supported by facts of record. In the absence of such evidentiary support, the Board will set aside the decision and remand the case to BLM for further consideration and preparation of a proper record.

Tommy L. Lynn, 60 IBLA 47 (Nov. 17, 1981)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fail to comply therewith, the application must be rejected.

Bernard S. Storper, 60 IBLA 67 (Nov. 19, 1981)

Where an offeror fails to submit a list of corporate officers with his noncompetitive over-the-counter lease offer, as required by 43 CFR 3102.2-5(a) (3), the lease offer is properly rejected. However, when the required evidence of corporate qualifications is submitted with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of submission of the evidence of qualifications.

Horn Silver Mines Co., Inc., 60 IBLA 107 (Nov. 20, 1981)

An applicant for a simultaneous oil and gas lease who is legally a minor at the time he executes and files the application is not qualified to hold a lease under the regulations, and the application is properly rejected.

Scott C. Adams, 60 IBLA 288 (Dec. 17, 1981)

88 I.D. 1110

Where an oil and gas lease applicant files an application with alleged statement of qualifications of a partnership but receives no serial number for the statement of qualifications under the regulation at 43 CFR 3102.2-1(c) and later files an application with no statement of qualifications as required by the regulation at 43 CFR 3102.2-4, the second application must be rejected as incomplete.

Zapria Exploration Group, 60 IBLA 336 (Dec. 22, 1981)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

A simultaneously filed oil and gas lease application may not be rejected as incomplete simply because the applicant failed to indicate a middle initial or indicate the absence of one on the front of the application form where no ambiguity exists as to the identity of the applicant.

George E. Conley, 61 IBLA 78 (Dec. 31, 1981)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

Reinstatement

A noncompetitive oil and gas lease offer filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

Thomas F. Keating, 53 IBLA 349 (Mar. 30, 1981)

640-acre Limitation

An oil and gas lease offer to lease less than 640 acres which adjoins land available for leasing is properly rejected.

Douglas H. Willson et al., 52 IBLA 246 (Feb. 6, 1981)

Where an offer to lease covers approximately 640 acres of land but at the time the offer is made a portion of those lands is not available for leasing, the lease offer does not meet the requirements of 43 CFR 3110.1-3(a) and is properly rejected.

Nova L. Dodgen, 54 IBLA 340 (May 7, 1981)

Sole Party in Interest

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b), and the offeror is required to disclose this interest at the time of filing under 43 CFR 3102.7

The Department has authority to cancel leases administratively where the lease was granted pursuant

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedSole Party in Interest--Continued

to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.L. 236

When an offer to lease is filed by a person asserting he is the sole party in interest in the offer, and an interest in the offer is created later in another person, it is not proper to reject the offer on the ground that the showings required by 43 CFR 3102.7 were not filed within 15 days after the offer was first filed.

Thomas H. Connelly, Vinco Exploration, Inc., 52 IBLA 206 (Jan. 27, 1981)

When over-the-counter applications for 11 oil and gas leases show that the offeror is not the sole party in interest, 11 separate statements meeting the requirements of 43 CFR 3102.7 must be filed not later than 15 days after the filing of the lease offers. If only 10 statements are submitted and none is individually identified with a corresponding serial number, all 11 offers must be rejected.

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

A copy of a document is not considered to be among the number filed if it is only received and date-stamped and returned to an applicant as evidence of receipt. Such acknowledgement of receipt by Bureau of Land Management personnel does not constitute a determination that the filing was complete or that all the documents recited in the cover letter were included. BLM is not required to retain that copy of the document, contrary to an applicant's instructions, in order to make the filing complete.

Oil and gas lease offers are properly rejected when required statements as to other parties in interest are not timely submitted. Under 43 CFR 3111.1-1(e), such a defect is not curable, even with respect to over-the-counter leases. Nevertheless, offers may be reinstated and allowed to earn priority from the time of the filing of the missing statement, or when an applicant withdraws a sufficient number of offers so that there are enough statements to cover the offers that remain active.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

The mere fact that a DEC is signed by someone other than the offeror does not necessarily mean that the person affixing the signature has an interest in the offer which must be disclosed.

An oil and gas lease offeror is not required to disclose the existence of any interests in the offer flowing to his wife on account of community property laws of any state.

John W. Bierlein, 53 IBLA 48 (Feb. 27, 1981)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedSole Party in Interest--Continued

An oil and gas lease offeror's agreement with a filing service which by its terms gives an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Phillip A. Kulin, 53 IBLA 57 (Feb. 27, 1981)

The naming of an additional party in interest on the reverse side of the drawing entry card is prima facie evidence that the named person is in fact an interested party within the ambit of 43 CFR 3102.7. However, it is not within the province of the Department of the Interior to determine the unstated intentions of the offeror as to how and when the right of an interested party will vest.

William B. Brice, 53 IBLA 174 (Mar. 16, 1981)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Vickie J. Landis, 54 IBLA 25 (Apr. 6, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedSole Party in Interest--Continued

Resource Service Co., Inc., Grace K. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Richard E. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest (which, by its own terms, does not apply to the service agreement) with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

Alex Sachen, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Semanko, Mary L. Holleton, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Ployd O. Lochner, 56 IBLA 271 (July 28, 1981)

"Interest in an oil and gas lease or offer." Where an oil and gas lease offeror in a written agreement gives another person a security interest in any lease issued pursuant to an offer filed under the agreement to secure only payment of lease rentals advanced by that person, that person does not have an interest in the lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

Warren R. Haas, 57 IBLA 247 (Aug. 28, 1981)

Where an applicant places the name of another party in interest on his simultaneous noncompetitive oil and gas lease application and files a separate statement indicating that there is an oral agreement between them under which he has 50 percent and the other party has 50 percent, it is reasonable to assume that the applicant refers to 50 percent of all of any interest acquired by him. This statement adequately states the nature of the oral agreement between the applicant and the other party in interest, and BLM's decision rejecting the application for failure to state the nature of the other party's interest will be vacated.

Phillip E. Flanagan, 57 IBLA 357 (Sept. 8, 1981)

A noncompetitive oil and gas lease application filed in a simultaneous drawing must be rejected if it contains the names of additional parties in interest, and there is a failure to submit the information required by 43 CFR 3102.2-7(b).

Affidavits and other evidence, including a shipping notice and a delivery receipt, indicating that the information required by 43 CFR 3102.2-7(b), in connection with noncompetitive oil and gas lease offers, was submitted timely to BLM is not sufficient to overcome the presumption that public officials have properly discharged their duties and have not misplaced or lost the document in issue where the corroborating evidence fails to relate the submission directly to the lease application at issue.

Lawrence E. Dye, 57 IBLA 360 (Sept. 8, 1981)

Where an applicant places the name of another party in interest on his simultaneous oil and gas lease application and files a statement indicating that they have an oral agreement under which he has a 25 percent interest and the other party a 75 percent interest and that they have agreed to divide expenses and proceeds based on those percentages, the applicant has satisfied the requirement of 43 CFR 3102.2-7(b) that the nature of their oral understanding be set forth.

F. C. Minkler III, F. C. Minkler, M. D., 59 IBLA 203 (Oct. 27, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby, when the individual sells a lease acquired during his participation in the program, the proceeds from the sale of that lease will be deposited into the Lease Sales Escrow Account; and 49 percent of any consideration received by the individual shall be assigned to the leasing service should the individual dispose of his interest in a lease in any manner other than by sale, the leasing service does not have an enforceable right to share in the proceeds of any sale or any interest therein. Such an agreement does not create for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

"Interest." Where there is an agreement giving an individual the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b) (1979).

Harry S. Hills et al., 59 IBLA 241 (Oct. 28, 1981)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

Ilean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

Where an applicant places the name of another party in interest on his simultaneous noncompetitive oil and gas lease application and files a separate statement indicating that there is an oral agreement between them under which he has 50 percent and the other party has 50 percent, it is reasonable to assume that the applicant refers to 50 percent of all of any interest acquired by him. This statement adequately states the nature of the oral agreement between the applicant and the other party in interest, and BLM's decision rejecting the application for failure to state the nature of the other party's interest will be vacated.

A statement setting forth the nature of an oral agreement between a simultaneous noncompetitive oil and gas lease applicant and another party in interest must include, or be accompanied within 15 days after the filing by, statements signed by the latter setting forth his citizenship and compliance with acreage limitations on pain of rejection of the application.

Kenneth H. Gray, Jay R. Garner, 60 IBLA 110 (Nov. 20, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

An entitlement to share in the proceeds from the sale of a lease or part thereof, contingent upon the lease being sold, is an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

Rosita Trujillo, 60 IBLA 316 (Dec. 18, 1981)

A simultaneous oil and gas lease application filed on behalf of a joint venture must be rejected if it is signed only by an individual member with no proper reference to the name of the joint venture or other members thereof.

James E. Webb, 60 IBLA 323 (Dec. 18, 1981)

ASSIGNMENTS OR TRANSFERS

Where no application for BLM's approval of a transfer of any interest in an offer and lease (if issued) has ever been filed, BLM should issue the lease, if appropriate, to the offeror only.

The regulations controlling transfer of oil and gas interests were amended on June 16, 1980, and the amended regulations govern where the interest holder has not sought approval of a transfer of his interest prior to this date. Under these amended regulations, BLM cannot consider any application for approval of a transfer of a lease interest until after the lease is issued.

Estate of Glenn F. Coy, Resource Service Co., Inc.,
52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant therefor. An extension of time may be granted to supply necessary evidence of joinder in a unit agreement prior to lease issuance and a lease offer will not be rejected in favor of a junior offeror where an extension is timely requested and the requested evidence is provided in good faith and without unreasonable delay thereafter.

Barbara J. Niermberger, Thomas H. Connelly, 53 IBLA 112
(Mar. 4, 1981) 88 I.D. 347

No assignment can be approved for a terminated oil and gas lease.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

Where there is a private dispute as to the validity or effect of an oil or gas lease assignment and where that assignment has been approved without notice of a controversy as to its effect or validity, and the Department subsequently receives notice of a controversy, it has declined to disturb existing conditions or to approve any change without evidence of an agreement among the parties or a court decree on the matter in controversy. Departmental policy is to allow an approved assignment to stand, maintaining the status quo, in order to allow the parties to resolve their disputes.

William B. Brice, 53 IBLA 174 (Mar. 16, 1981)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

Where two assignments are executed transferring complete record title of an oil and gas lease from the lessee to a second party and from him to a third party, where the assignments are submitted to the Bureau of Land Management for approval at the same time so that each will be effective on the same day, and where the third party has certified his qualifications to hold the lease, BLM need not refuse to approve the assignments for failure of the second party to submit a supplemental qualifications certification because, at no time, will the second party be the effective lessee and no interest in the lease has been retained by him.

Richard P. Walker, 54 IBLA 4 (Apr. 1, 1981)

Under 30 U.S.C. § 184(h) (1976), the determination whether an assignee of an oil and gas lease is a bona fide purchaser must be based on the circumstances existing on the date the assignment is effective between the lessee of record and the assignee. An assignee is not required to file the assignment with BLM for approval as a condition of bona fide purchaser status.

Frederick J. Schlicher, 54 IBLA 61 (Apr. 10, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing; and where, at the time it consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the DEC, provided that the purchaser had no actual knowledge of any defect in the DEC.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing, or in prospect; and where, at the time it consummated the agreement by payment of consideration, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer or the resultant lease.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter.

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

A request for approval of assignment of record title to an oil and gas lease is properly denied in the absence of evidence of the qualifications of the assignee trust to hold Federal oil and gas leases.

Montana Bank (Trustee), 54 IBLA 359 (May 18, 1981)

A party who purchased a first-drawn simultaneous noncompetitive DEC lease offer under authority of a regulation then in effect, is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Where approval of an assignment of oil and gas lease record title was not requested of the Bureau of Land Management until over 4 years after the assignment transaction, approval was properly denied under 43 CFR 3106.3-1.

Although the regulation governing Bureau of Land Management approval of assignments of oil and gas lease record title, 43 CFR 3106.3-1, does not strictly require rejection of the request for approval in every case where the stated 90-day limit has been exceeded, the approval cannot be given where the applicant is almost 4 years tardy with his request and another party has in the interim received approval for transfer of the same record title. It is Departmental policy to decline adjudication of issues regarding the validity or effect of conflicting assignments until the parties have first settled their dispute privately or in court.

Alminex USA, Inc., 55 IBLA 315 (June 26, 1981)

A party which purchased a first-drawn simultaneous noncompetitive DEC lease is a bona fide purchaser of this interest where, throughout the time during which it agreed to purchase the offer, paid consideration, and formally requested approval of the assignment, BLM's case records indicated that BLM had resolved a question about the validity of the offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser had no actual knowledge of any defect in the offer.

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

When an applicant for assignment of an oil and gas lease fails to submit a certification of new qualifications to hold an oil and gas lease, it is proper to reject the application for assignment. Such an application may be reinstated where the applicant has provided the required certification on appeal and no third party rights are involved.

Jane Ray Dietrich, 55 IBLA 380 (June 29, 1981)

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser of the lease had no actual knowledge of any defect in the underlying offer.

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser, is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

In the absence of evidence of actual knowledge that a lease offer was made in violation of the regulations, reliance by an assignee of the lease on the Bureau of Land Management decision to issue the lease is not unreasonable and will support assignee's claim of bona fide purchaser status where there is no pending inquiry, protest, or appeal proceeding.

David Burr et al., 56 IBLA 225 (July 22, 1981)

Upon approval by BLM of an assignment of an oil and gas lease, the responsibility for providing an adequate bond transfers from the assignor to the assignee pursuant to 43 CFR 3106.2-3. BLM should evaluate the adequacy of the bond offered by the assignee and resolve any deficiencies before approving the assignment. Once BLM approves the assignment, it may not thereafter refuse to release the assignor's bond.

Karis Oil Co., Inc., 58 IBLA 123 (Sept. 24, 1981)

BONA FIDE PURCHASER

Where an oil and gas lease has inadvertently been issued for land, which was the subject of a then current lease in good standing and the newly issued lease is properly canceled, there is no authority to refund to assignees the purchase price paid for the lease or to issue to them an oil and gas lease on Federal land in value equal thereto.

Husky Oil Co., Pan Eastern Exploration Co., 52 IBLA 41 (Jan. 6, 1981)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

Under 30 U.S.C. § 184(h) (1976), the determination whether an assignee of an oil and gas lease is a bona fide purchaser must be based on the circumstances existing on the date the assignment is effective between the lessee of record and the assignee. An assignee is not required to file the assignment with BLM for approval as a condition of bona fide purchaser status.

Frederick J. Schlicher, 54 IBLA 61 (Apr. 10, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing; and where, at the time it consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the DEC, provided that the purchaser had no actual knowledge of any defect in the DEC.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing, or in prospect; and where, at the time it consummated the agreement by payment of consideration, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer or the resultant lease.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter.

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

A party who purchased a first-drawn simultaneous noncompetitive DEC lease offer under authority of a regulation then in effect, is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

A party which purchased a first-drawn simultaneous noncompetitive DEC lease is a bona fide purchaser of this interest where, throughout the time during which it agreed to purchase the offer, paid consideration, and formally requested approval of the assignment, BLM's case records indicated that BLM had resolved a question about the validity of the offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser had no actual knowledge of any defect in the offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser of the lease had no actual knowledge of any defect in the underlying offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser, is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h) (2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

In the absence of evidence of actual knowledge that a lease offer was made in violation of the regulations, reliance by an assignee of the lease on the Bureau of Land Management decision to issue the lease is not unreasonable and will support assignee's claim of bona fide purchaser status where there is no pending inquiry, protest, or appeal proceeding.

David Burr et al., 56 IBLA 225 (July 22, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-RGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be canceled and to show that they acquired their interests as bona fide purchasers.

A. D. Matchett, 56 IBLA 231 (July 22, 1981)

Where, at the time of an assignment of an oil and gas lease, BLM's oil and gas status plat reveals that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981)

BONDS

Where an oil or gas lessee has on file with a Bureau of Land Management State Office an approved statewide bond, a separate bond for the protection of surface owners is no longer required. 43 CFR 3104.2 and 3104.3.

Theo R. Cassin, 55 IBLA 257 (June 22, 1981)

Upon approval by BLM of an assignment of an oil and gas lease, the responsibility for providing an adequate bond transfers from the assignor to the assignee pursuant to 43 CFR 3106.2-3. BLM should evaluate the adequacy of the bond offered by the assignee and resolve any deficiencies before approving the assignment. Once BLM approves the assignment, it may not thereafter refuse to release the assignor's bond.

Karis Oil Co., Inc., 58 IBLA 123 (Sept. 24, 1981)

CANCELLATION

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates.

Where an oil and gas lease has inadvertently been issued for land, which was the subject of a then current lease in good standing and the newly issued lease is properly canceled, there is no authority to refund to assignees the purchase price paid for the lease or to issue to them an oil and gas lease on Federal land in value equal thereto.

Husky Oil Co., Pan Eastern Exploration Co., 52 IBLA 41 (Jan. 6, 1981)

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

time of filing, the existence of all parties holding interests in the offer.

Estate of Glenn F. Coy, Resource Service Co., Inc.,
52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be canceled and to show that they acquired their interests as bona fide purchasers.

A. D. Matchett, 56 IBLA 231 (July 22, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. Where an oil and gas lease has issued to a corporate applicant whose offer lacked priority because of noncompliance with 43 CFR 3102.2-5, requiring the filing of a list of corporate officials, such lease is properly canceled where another offer was filed for the same lands before the applicant cured the defect in its own offer.

Trans-Texas Energy, Inc., 56 IBLA 295 (July 28, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to a valid previously filed offer, where it subsequently issues a second conflicting lease for the same lands to the senior offeror, and where the junior lease has not been assigned to a bona fide purchaser, BLM's decision canceling the lease issued to the senior offeror will be vacated, because the statute governing oil and gas leasing of non-KGS lands dictates that the qualified person first making application for a lease

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

(the senior offeror) is entitled to receive any lease which is issued.

Where, at the time of an assignment of an oil and gas lease, BLM's oil and gas status plat reveals that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981)

COMMUNITIZATION AGREEMENTS

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved cooperative or unit agreement on the last day of the lease term. Where no communitization agreement associating leased lands with a producing well on other lands is filed for approval with Geological Survey prior to the end of the primary term of the lease, and where Survey, therefore, has no opportunity to approve such an agreement prior to this time, the lease does not qualify for an extension under 43 CFR 3107.2-3.

Devon Corp., 57 IBLA 131 (Aug. 25, 1981)

COMPETITIVE LEASES

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where a high bid tendered at a competitive oil and gas lease sale, not clearly spurious or irresponsible, is rejected solely on the basis of a conclusory statement by the Geological Survey that the bid was inadequate and no substantial factual basis for that conclusion appears in the record, the decision will be set aside and the case remanded for compilation of a proper record and readjudication of the bid.

Amoco Production Co., 53 IBLA 72 (Mar. 2, 1981)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Southern Union Exploration Co., 54 IBLA 59 (Apr. 9, 1981)

Where the Bureau of Land Management (BLM) has offered lands for competitive oil and gas lease sale, and on appeal the high bidder presents evidence which raises a question concerning the leasability by BLM of certain of those lands because of possible conflicting ownership problems between the United States and the Choctaw, Chickasaw, and Cherokee Indian Nations, the sale shall be voided and the high bidder's bonus bid deposit returned.

Samson Resource Co., 55 IBLA 51 (May 29, 1981)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale must certify as to the acreage limitations and must submit a statement of citizenship or of corporate qualifications under 43 CFR 3120.1-4, failure to comply with the regulations does not require rejection of the bid. In competitive lease offers, where price rather than priority of filing is the primary criterion, certain deviations from mandatory requirements are curable defects.

Eurafrep, Inc., 55 IBLA 275 (June 25, 1981)

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

W. W. Priest, Michael Manduca, 55 IBLA 398 (June 30, 1981)

Failure of the high bidder at a competitive oil and gas lease sale to execute a lease results in forfeiture of the deposit submitted with the high bid. Refund of the deposit because offeror elects after the sale to withdraw his offer is not allowed.

Howell Spear, 56 IBLA 151 (July 20, 1981)

A personal check is not an acceptable form of remittance under 43 CFR 3120.1-4(b) requiring a successful bidder to submit one-fifth of the amount bid as a deposit and must result in rejection of the competitive bid.

Belco Petroleum Corp., 57 IBLA 3 (Aug. 5, 1981)

Where a competitive, fractional interest, oil and gas lease is issued with conflicting and confusing rental provisions recited in the lease terms and in an attachment to the lease, a deficient rental payment by the lessee in reasonable reliance on the section providing for rental based upon the pro rata fractional interest of the United States will be considered justified so as to qualify the terminated lease for reinstatement.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981)
88 I.D. 879

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Department of the Interior is not required under the Freedom of Information Act to release its presale evaluation of parcels prior to the acceptance of competitive oil and gas lease bids.

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

William C. Welch, 60 IBLA 248 (Dec. 4, 1981)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Harold R. Leeds, 60 IBLA 383 (Dec. 23, 1981)

CONSENT OF AGENCY

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

Esdra K. Hartley, 54 IBLA 38 (Apr. 9, 1981)

88 I.D. 437

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Dennis Harris, 55 IBLA 280 (June 25, 1981)

The recommendations of the Forest Service are important in determining whether or not an oil and gas lease should issue for public lands but are not conclusive. Ultimately, the Secretary of the Interior is entrusted with the responsibility of determining whether or not to issue a lease.

Natural Gas Corp. of California, 59 IBLA 348 (Nov. 5, 1981)

CONTRACTS FOR SALE OF ROYALTY OIL OR GAS

An application to purchase offshore royalty oil, submitted in response to a notice published in the Federal Register on Jan. 14, 1980, is properly rejected where the applicant's runs to stills per calendar day exceed the applicant's refining capacity per calendar day.

Quitman Refining Co., 57 IBLA 53 (Aug. 17, 1981)

An application to purchase offshore royalty oil, submitted in response to a notice published in the Federal Register on Jan. 14, 1980, is properly rejected where the refinery capacity presented in the application was not certified by the Economic Regulatory Administration as operable on or before Apr. 1, 1980, as required by the notice of sale.

Isthmus Refining Corp., 60 IBLA 331 (Dec. 22, 1981)

OIL AND GAS LEASES--Continued

CONTRACTS FOR SALE OF ROYALTY OIL OR GAS--Continued

Limitation of a small refiner's allocation in a sale of Outer Continental Shelf royalty oil under sec. 27(b)(2) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. § 1353(b)(2) (Supp. II 1978), to excess refinery capacity, as determined by subtracting the volume of oil actually refined in a representative period from the applicant's refinery capacity, is both reasonable and consistent with the statutory authority.

Mid-America Refining Co., 61 IBLA 84 (Dec. 31, 1981)

DESCRIPTION OF LAND

Where a regulation allows land description by legal subdivision, section, township and range, by metes and bounds, and by "tract acquisition numbers," but is insufficiently clear to allow a determination as to when one, rather than another of these methods of description should be used, an oil and gas lease offeror who has described the lands sought by tract acquisition numbers will not be held to have lost his statutory preference right for failure to comply with the regulation if the description afforded is accurate for the purpose.

Walter R. Wilson, Jr., 55 IBLA 96 (June 1, 1981)

DISCOVERY

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Jack J. Bender, 54 IBLA 375 (May 19, 1981) 88 I.D. 550

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear showing that the determination was improperly made, nor will the applicable rental be reduced without such showing.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and

OIL AND GAS LEASES--Continued

DISCOVERY--Continued

accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 60 IBLA 117 (Nov. 24, 1981)

DISCRETION TO LEASE

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Amoco Production Co., 53 IBLA 72 (Mar. 2, 1981)

Where title to the minerals in a tract of acquired land which is the subject of an oil and gas lease offer cannot be determined from records in the possession of the BLM, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Applicant may be required to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow BLM to determine the status of title to the oil and gas in the tract sought for leasing. Rejection of the offer in the exercise of the Secretary's discretion over leasing is proper where an applicant declines to provide such information.

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

The Secretary may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. When the Secretary determines not to lease a certain area for oil and gas and that determination is based upon considerations of public interest, his exercise of discretion is neither arbitrary nor capricious. Where BLM rejects an isolated 15-acre tract for oil and gas because of its relatively small size, such decision will be reversed as arbitrary and capricious.

Frances H. Rodke, 53 IBLA 98 (Mar. 4, 1981)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James E. Sullivan, 54 IBLA 1 (Apr. 1, 1981)

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be affirmed where it sets forth the reasons therefor and the facts of record support the conclusion that refusal to lease is in the public interest.

Rejection of an oil and gas lease offer is a more severe measure than the most stringent stipulations and the record supporting a decision rejecting a lease offer in the public interest should ordinarily reflect consideration of whether leasing subject to clear and reasonable stipulations would adequately protect the public interest concerns of the surface management agency.

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

Esdras K. Hartley, 54 IBLA 38 (Apr. 9, 1981)

88 I.D. 437

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Southern Union Exploration Co., 54 IBLA 59 (Apr. 9, 1981)

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Lands acquired for the specific purpose of creating a sanctuary for, and the protection of, wildlife in the vicinity of the Lake Zahl National Wildlife Refuge fall within that prohibition.

Lee B. Williamson, 54 IBLA 326 (Apr. 30, 1981)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Where an acquired lands noncompetitive oil and gas lease offer is partially rejected on the basis of a recommendation made by the Bureau of Reclamation and merely concurred in by the Forest Service and an appeal the offeror alleges that the present policy of the Bureau of Reclamation is to lease with appropriate stipulations and the record fails to support adequately the original recommendation, the case will be remanded in order to determine whether a lease may issue for such lands.

Esdras K. Hartley, 57 IBLA 293 (Aug. 31, 1981)

A regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes leasing lands withdrawn for the protection of all species of wildlife within a particular area.

Designation of an area as a critical habitat pursuant to sec. 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C.A. § 1536 (West Supp. 1980), does not necessarily foreclose oil and gas leasing in that area.

The Secretary of the Interior may, in his discretion, reject any offer to lease Federal lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land has been designated a critical habitat pursuant to sec. 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C.A. § 1536 (West Supp. 1980), and where BLM determines that oil and gas development would result in an unavoidable adverse impact, rejection of a lease offer will be affirmed in the absence of countervailing compelling reasons.

Esdras K. Hartley, Impel Energy Corp., 57 IBLA 319 (Sept. 1, 1981)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing might adversely affect the Mexican desert bighorn sheep or its habitat, that animal being a State of New Mexico endangered species and the subject of a cooperative agreement between the State and BLM made pursuant to sec. 2 of the Act of Oct. 18, 1974, 16 U.S.C. § 670g (1976).

Placid Oil Co. et al., 58 IBLA 294 (Oct. 14, 1981)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act.

The recommendations of the Forest Service are important in determining whether or not an oil and gas lease should issue for public lands but are not conclusive. Ultimately, the Secretary of the Interior is entrusted with the responsibility of determining whether or not to issue a lease.

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

will be affirmed where it sets forth the reasons therefore and the facts of record support the conclusion that refusal to lease is in the public interest.

Natural Gas Corp. of California, 59 IBLA 348 (Nov. 5, 1981)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

William C. Welch, 60 IBLA 248 (Dec. 4, 1981)

Harold R. Leeds, 60 IBLA 383 (Dec. 23, 1981)

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Mugget Oil Corp., 61 IBLA 43 (Dec. 31, 1981)

DRILLING

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or, for the lease under an approved unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

EXTENSIONS

A State Office properly holds that a noncompetitive oil and gas lease expires at the end of its primary term when there is no cognizable activity on the leased lands as of that date under 30 U.S.C. § 226(e) (1976), and the unit or cooperative provisions of 30 U.S.C. § 226(j) have not operated to extend the lease.

Pacific Transmission Supply Co. and Raymond Chorney, 53 IBLA 204 (Mar. 18, 1981)

Where a unit agreement specifies that a determination whether a well completed prior to the effective date of the agreement is capable of producing in paying quantities will be deferred until completion of a well capable of producing in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or, for the lease under an approved unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved cooperative or unit agreement on the last day of the lease term. Where no communitization agreement associating leased lands with a producing well on other lands is filed for approval with Geological Survey prior to the end of the primary term of the lease, and where Survey, therefore, has no opportunity to approve such an agreement prior to this time, the lease does not qualify for an extension under 43 CFR 3107.2-3.

Devon Corp., 57 IBLA 131 (Aug. 25, 1981)

Where the record shows that, at the end of the primary term of a noncompetitive oil and gas lease, there is no active production of oil or gas in paying quantities from the lease area and no well capable of such production, the lease terminates automatically by operation of law as of the expiration date of the lease, in the absence of allegations by the lessees that there was such production or a well capable of such production.

Assuming, arguendo, that an oil and gas lease area contained a well capable of production of oil or gas in paying quantities on its expiration date, the lease terminates automatically as of this date if the lessee fails to comply with a 60-day notice from Geological Survey to put this well into production. An alleged filing of information showing production 2 years after the expiration of the 60-day notice period would not resuscitate the lease.

Where an oil and gas lease has already terminated by operation of law, the subsequent issuance by Geological Survey of a 60-day notice to produce does not renew the lease.

Edward H. Coltharp, Dale F. Killian, 58 IBLA 234 (Oct. 6, 1981)

FIRST-QUALIFIED APPLICANT

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Where the offeror has failed to submit a signed check for the advance rental within the time allowed, he is properly disqualified to receive the lease.

William H. Bevis, 52 IBLA 125 (Jan. 13, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b), and the offeror is

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

required to disclose this interest at the time of filing under 43 CFR 3102.7

Estate of Glenn F. Coy, Resource Service Co., Inc.,
52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Phillip A. Kulin, 53 IBLA 57 (Feb. 27, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant therefor. An extension of time may be granted to supply necessary evidence of joinder in a unit agreement prior to lease issuance and a lease offer will not be rejected in favor of a junior offeror where an extension is timely requested and the requested evidence is provided in good faith and without unreasonable delay thereafter.

Barbara J. Niernberger, Thomas H. Connelly, 53 IBLA 112
(Mar. 4, 1981) 88 I.D. 347

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches eo instante.

Robert E. Bergman and Evan V. Bergman, 53 IBLA 122
(Mar. 5, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

An undated DEC lease offer is defective and must be rejected.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace K. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Richard E. McDonald, Resource Service Co., Inc.,
56 IBLA 12 (June 30, 1981)

Where an applicant fails to file five copies of a noncompetitive over-the-counter lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, the offer must be rejected. However, when the additional required copy of the lease offer is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of the filing of the additional copy with the BLM.

Curtis Wheeler, 55 IBLA 65 (May 29, 1981)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit the advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, notwithstanding the fact that at the time of the notice the Secretary had suspended the Bureau of Land Management's authority to issue noncompetitive oil and gas leases until further notice. However, if the first-drawn applicant files a notice of appeal within that time period, the time period is suspended and following affirmation of Bureau of Land Management's decision, the first-drawn applicant is properly given the entire time period from receipt of the Board's decision within which to submit the rental.

Robert A. Shryock, Jas. O. Breene, Jr., 55 IBLA 74
(June 1, 1981)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

It is proper for the Bureau of Land Management to reject an oil and gas lease offer filed over the counter for land formerly included in a lease which expired at the end of its term or terminated automatically for nonpayment of rental because under 43 CFR 3112.1-1 such land is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Curtis Wheeler, 56 IBLA 58 (July 10, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest (which, by its own terms, does not apply to the service agreement) with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

Alex Sachen, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Semanko, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured.

Trans-Texas Energy, Inc., 56 IBLA 211 (July 22, 1981)

Trans-Texas Energy, Inc., 57 IBLA 32 (Aug. 6, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

be canceled and to show that they acquired their interests as bona fide purchasers.

A. L. Matchett, 56 IBLA 231 (July 22, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. Where an oil and gas lease has issued to a corporate applicant whose offer lacked priority because of noncompliance with 43 CFR 3102.2-5, requiring the filing of a list of corporate officials, such lease is properly canceled where another offer was filed for the same lands before the applicant cured the defect in its own offer.

Trans-Texas Energy, Inc., 56 IBLA 295 (July 28, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Floyd C. Lochner, 56 IBLA 271 (July 28, 1981)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether offeror is qualified, the offer is properly rejected.

Judith Gail Fell, 57 IBLA 139 (Aug. 25, 1981)

An application drawn first in a simultaneous drawing which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

It is not permitted to file a simultaneous noncompetitive lease application bearing both the names of an association and of an individual. Where an individual intends to submit an application on behalf of the partnership, he should list its name alone on the application and sign the card as its authorized agent.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

submission of required evidence of qualifications after the drawing.

Stephen A. Pitt, L & P Investments, 57 IBLA 365 (Sept. 8, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to a valid previously filed offer, where it subsequently issues a second conflicting lease for the same lands to the senior offeror, and where the junior lease has not been assigned to a bona fide purchaser, BLM's decision canceling the lease issued to the senior offeror will be vacated, because the statute governing oil and gas leasing of non-RGS lands dictates that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981)

Where an over-the-counter noncompetitive oil and gas lease offer is filed by a corporation unaccompanied by a statement of its qualifications or a reference by serial number to the record in which it has been filed, and such defect is remedied prior to the filing of any junior offer, such offer may be considered with priority as of the date the curative information is filed.

Century Oil and Gas Corp., 58 IBLA 227 (Sept. 30, 1981)

A simultaneous noncompetitive oil and gas lease application which is not dated is properly rejected.

Jerry R. Smith, 58 IBLA 232 (Oct. 6, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

A first-drawn application that is defective because of noncompliance with 43 CFR 3112.2 cannot be cured by submission of additional information after the drawing.

Herman Birnbaum, 58 IBLA 279 (Oct. 8, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Joan S. Maguire, 59 IBLA 130 (Oct. 26, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

William C. Reuling, 59 IBLA 226 (Oct. 28, 1981)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where an offeror fails to submit a list of corporate officers with his noncompetitive over-the-counter lease offer, as required by 43 CFR 3102.2-5(a)(3), the lease offer is properly rejected. However, when the required evidence of corporate qualifications is submitted with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of submission of the evidence of qualifications.

Horn Silver Mines Co., Inc., 60 IBLA 107 (Nov. 20, 1981)

Where a decision of a BLM state office requires a priority applicant for an oil and gas lease being issued through the simultaneous filing system to file supplemental information within a specified period of time, and the information is filed after this period has run, then delay in filing may not be waived pursuant to 43 CFR 1821.2-2(g), because the rights of applicants drawn with a subsidiary priority have intervened.

F. Peter Zoch, 60 IBLA 150 (Nov. 24, 1981)

An entitlement to share in the proceeds from the sale of a lease or part thereof, contingent upon the lease being sold, is an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

Rosita Trujillo, 60 IBLA 316 (Dec. 18, 1981)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

Jeff Co., 61 IBLA 74 (Dec. 31, 1981)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

FUTURE AND FRACTIONAL INTEREST LEASES

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Irma Spear, 52 IBLA 360 (Feb. 19, 1981)

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

Where a competitive, fractional interest, oil and gas lease is issued with conflicting and confusing rental provisions recited in the lease terms and in an attachment to the lease, a deficient rental payment by the lessee in reasonable reliance on the section providing for rental based upon the pro rata fractional interest of the United States will be considered justified so as to qualify the terminated lease for reinstatement.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981)
88 I.D. 879

KNOWN GEOLOGIC STRUCTURE

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes the priority of filing. The offeror is not justified in relying on the expected issuance of a lease.

Richard J. DiMarco, 53 IBLA 130 (Mar. 5, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field.

William M. Turner, 54 IBLA 111 (Apr. 15, 1981)

P. M. Braun, 60 IBLA 246 (Dec. 4, 1981)

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Jack J. Bender, 54 IBLA 375 (May 19, 1981) 88 I.D. 550

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear showing that the determination was improperly made, nor

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

will the applicable rental be reduced without such showing.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1).

Ambra Oil and Gas Co., 58 IBLA 67 (Sept. 22, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. Neither the fact that the noncompetitive offeror followed all of the applicable rules and regulations in making its offer nor the fact that the Bureau of Land Management delayed in getting a report from Geological Survey regarding the known geologic structure determination vitiates this conclusion.

George Reddy & Associates, 59 IBLA 359 (Nov. 9, 1981)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 60 IBLA 117 (Nov. 24, 1981)

Where, on appeal, an oil and gas lessee submits evidence disputing a decision of BLM that a portion of the land embraced by his lease is on a known geologic structure of a producing oil or gas field, and there is no basis in the record to support BLM's determination, the decision will be set aside and the case remanded for consideration by BLM of appellant's contentions.

Hepburn T. Armstrong, 60 IBLA 140 (Nov. 24, 1981)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

BLM has satisfied its burden of giving notice of the inclusion of leased lands in a KGS and of the concomitant increase in annual rental to \$2 per acre or fraction thereof when it notifies the lessees of record, regardless of its failure to notify the holder of operating rights under the lease.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error, and the determination will not be disturbed in the absence of a clear and definite showing of error.

Juanita H. Mayer, 60 IBLA 391 (Dec. 23, 1981)

Where an applicant for a noncompetitive oil and gas lease submits probative evidence opposing the determination by the Geological Survey that certain lands are within the known geologic structure, a hearing will be ordered so that a complete record may be developed.

Daniel A. Engelhardt, 61 IBLA 65 (Dec. 31, 1981)

LANDS SUBJECT TO

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

Fred R. Cerminaro, 52 IBLA 116 (Jan. 13, 1981)

In general, unless the Mineral Leasing Act or a withdrawal or reservation specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the Mineral Leasing Act, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved.

Chevron U.S.A., Inc., 52 IBLA 278 (Feb. 6, 1981)

Where land is conveyed pursuant to the Stock Raising Homestead Act, 43 U.S.C. § 299 (1976), reserving to the United States all minerals therein, and thereafter the land is reconveyed to the United States, it is error for BLM to reject an offer to lease for oil and gas on the basis that the United States does not own the minerals therein.

A decision to reject a noncompetitive oil and gas lease offer on the grounds that the United States does not own the oil and gas interest will be vacated where the record shows that the subject lands were patented by the State of Utah after passage of secs. 5575x and

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

5575x1, Ch. 107, Laws of Utah (May 12, 1919), requiring the State to reserve all coal and minerals in lands thereafter conveyed, but where the record is silent as to whether an application to purchase had been approved by the State of Utah prior to passage of secs. 5575x and 5575x1 on May 12, 1919.

Douglas H. Willson et al., 52 IBLA 390 (Feb. 24, 1981)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

Pursuant to 43 CFR 3112.1-1, all lands which are not within a known geologic structure of a producing oil and gas field and are covered by canceled or relinquished leases, leases which terminated for nonpayment of rental or leases which expired by operation of law at the end of their primary or extended terms, are subject to leasing only in accordance with the simultaneous filing system. The Bureau of Land Management has no discretion under the regulations to accept over-the-counter offers for such lands.

John W. Foderick, 53 IBLA 258 (Mar. 19, 1981)

Curtis Wheeler, 54 IBLA 227 (Apr. 27, 1981)

James C. Haggard, 55 IBLA 36 (May 28, 1981)

Public domain land withdrawn or reserved is presumed to be available for oil and gas leasing unless the withdrawal or reservation specifically provides otherwise.

Esdra K. Hartley, 54 IBLA 38 (Apr. 9, 1981)

88 I.D. 437

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Lands acquired for the specific purpose of creating a sanctuary for, and the protection of, wildlife in the vicinity of the Lake Zuhl National Wildlife Refuge fall within that prohibition.

Lee B. Williamson, 54 IBLA 326 (Apr. 30, 1981)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-263 (1976).

Nova L. Dodgen, 54 IBLA 340 (May 7, 1981)

Where the Bureau of Land Management (BLM) has offered lands for competitive oil and gas lease sale, and on appeal the high bidder presents evidence which raises a question concerning the leasability by BLM of certain of those lands because of possible conflicting ownership problems between the United States and the Choctaw, Chickasaw, and Cherokee Indian Nations, the sale shall be voided and the high bidder's bonus bid deposit returned.

Samson Resource Co., 55 IBLA 51 (May 29, 1981)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Robert H. Covington et al., 55 IBLA 232 (June 22, 1981)
88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas offer filed for such land must be rejected. Even where the record is unclear whether the conflicting outstanding lease in question has been extended by drilling or whether it has expired at the end of its term, the land is still not available for the filing of new over-the-counter offers until it first has been posted by BLM as open to the filing of simultaneous offers.

Curtis D. Wheeler, 55 IBLA 278 (June 25, 1981)

It is proper for the Bureau of Land Management to reject an oil and gas lease offer filed over the counter for land formerly included in a lease which expired at the end of its term or terminated automatically for nonpayment of rental because under 43 CFR 3112.1-1 such land is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

Curtis Wheeler, 56 IBLA 58 (July 10, 1981)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Noncompetitive oil and gas offers to lease lands within National Petroleum Reserve-Alaska are properly rejected.

Andrew R. Kelly et al., 57 IBLA 71 (Aug. 20, 1981)

A noncompetitive oil and gas lease offer for acquired land within the boundaries of the Fort Laramie National Historic Site administered by the National Park Service is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes lands within national parks or monuments from its terms.

Ed Pendleton, 57 IBLA 146 (Aug. 25, 1981)

An oil and gas lease offer for lands in a reservoir right-of-way from other than the owner of the right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

RDM Interests, 57 IBLA 163 (Aug. 27, 1981)

The effect of a notation on a document stating that in a conveyance to the State of Wyoming "all petroleum" was reserved to the United States is overcome by evidence of more authoritative records establishing that petroleum was not reserved, and that such a reservation would have been contrary to the statute which conditioned the conveyance under the prevailing circumstances, so that an oil and gas lease offer for the purported reserved petroleum was properly rejected.

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Charles H. Whitlock, 57 IBLA 252 (Aug. 28, 1981)

A regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes leasing lands withdrawn for the protection of all species of wildlife within a particular area.

Where oil and gas lease offers are filed for lands the ownership of which is unresolved, such offers are subject to rejection for that reason.

Esdra K. Hartley, Impel Energy Corp., 57 IBLA 319 (Sept. 1, 1981)

Where a noncompetitive oil and gas lease offer is rejected because the oil and gas interest in the land sought is not owned by the United States, but the record does not support such a finding, the case will be remanded for reexamination of whether the land in question is available for oil and gas leasing.

Douglas H. Willson et al., 58 IBLA 115 (Sept. 24, 1981)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Lands the title to which has been conveyed to the United States pursuant to a private exchange authorized by sec. 8 of the Taylor Grazing Act do not become available for oil and gas leasing upon acceptance of title on behalf of the United States, but only when an order is issued opening the lands to such disposition.

Esdra K. Hartley, 58 IBLA 329 (Oct. 16, 1981)

Under sec. 17(j) of the Mineral Leasing Act the Secretary of the Interior may authorize the subsurface storage of oil and gas in lands leased or subject to leasing under the Act. Where an oil and gas lease applicant applies for lands underlain by such a storage area he may properly be required to execute a stipulation for the protection of the storage area.

M. Robert Paglee, 59 IBLA 192 (Oct. 27, 1981)

Pursuant to 43 CFR 3112.1-1, all lands which are not within a known geologic structure of a producing oil and gas field and are covered by canceled or relinquished leases, leases which terminated for nonpayment of rental or leases which expired by operation of law at the end of their primary or extended terms, are subject to leasing only in accordance with the simultaneous filing system.

Edna L. Williams, 59 IBLA 196 (Oct. 27, 1981)

Lands situated within the borders of incorporated cities and towns are excluded from leasing by the express terms of sec. 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976).

Potts Stephenson Exploration Co., 60 IBLA 397 (Dec. 28, 1981)

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Nugget Oil Corp., 61 IBLA 43 (Dec. 31, 1981)

NONCOMPETITIVE LEASES

Where an oil and gas lease offeror makes reference by serial number in its offer to its corporate qualifications which were previously filed in another Bureau of Land Management State Office and such qualifications were on file in that office on the date of the lease offer, the offer may not be rejected because at the time of consideration of the offer the qualifications had been removed from active status without the offeror's knowledge.

ARI-MEX Oil & Exploration, Inc., 53 IBLA 37 (Feb. 26, 1981)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant therefor. An extension of time may be granted to supply necessary evidence of joinder in a unit agreement prior to lease issuance and a lease offer will not be rejected in favor of a junior offeror where an extension is timely requested and the requested evidence is provided in good faith and without unreasonable delay thereafter.

Barbara J. Nierenberger, Thomas H. Connolly, 53 IBLA 112 (Mar. 4, 1981) 88 I.L. 347

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes the priority of filing. The offeror is not justified in relying on the expected issuance of a lease.

Richard J. DiMarco, 53 IBLA 130 (Mar. 5, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field.

William M. Turner, 54 IBLA 111 (Apr. 15, 1981)

P. M. Braun, 60 IBLA 246 (Dec. 4, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured.

Trans-Texas Energy, Inc., 56 IBLA 211 (July 22, 1981)

Trans-Texas Energy, Inc., 57 IBLA 32 (Aug. 6, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-MGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be canceled and to show that they acquired their interests as bona fide purchasers.

A. D. Matchett, 56 IBLA 231 (July 22, 1981)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. Where an oil and gas lease has issued to a corporate applicant whose offer lacked priority because of noncompliance with 43 CFR 3102.2-5, requiring the filing of a list of corporate officials, such lease is properly canceled where another offer was filed for the same lands before the applicant cured the defect in its own offer.

Trans-Texas Energy, Inc., 56 IBLA 295 (July 28, 1981)

Where, following adjudication of her simultaneous noncompetitive oil and gas lease application, an applicant fails to submit advance first-year rental along with paperwork for the lease agreement within 30 days from her receipt of notice to do so, as required by 43 CFR 3112.4-1(a), her application is properly rejected under 43 CFR 3112.6-1(d).

Theresa Jibilian, 57 IBLA 354 (Sept. 8, 1981)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

Robert G. Lynn, 60 IBLA 117 (Nov. 24, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to a valid previously filed offer, where it subsequently issues a second conflicting lease for the same lands to the senior offeror, and where the junior lease has not been assigned to a bona fide purchaser, BLM's decision canceling the lease issued to the senior offeror will be vacated, because the statute governing oil and gas leasing of non-KGS lands dictates that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981)

Where a noncompetitive oil and gas lease offer is rejected because the oil and gas interest in the land sought is not owned by the United States, but the record does not support such a finding, the case will be remanded for reexamination of whether the land in question is available for oil and gas leasing.

Douglas H. Willson et al., 58 IBLA 115 (Sept. 24, 1981)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. Neither the fact that the noncompetitive offeror followed all of the applicable rules and regulations in making its offer nor the fact that the Bureau of Land Management delayed in getting a report from Geological Survey regarding the known geologic structure determination vitiates this conclusion.

George Reddy & Associates, 59 IBLA 359 (Nov. 9, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Juanita H. Mayer, 60 IBLA 391 (Dec. 23, 1981)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

OPERATING AGREEMENTS

Determinations by Geological Survey delineating two communicating gas-bearing structures or sands and providing that unitization of leases producing gas from these sands is in the interest of conservation will be affirmed where the record shows that these determinations were reasonably based on facts of record.

A challenge to decisions by Geological Survey (1) that various outer continental shelf wells are producing from common reservoirs, i.e., that they are "competitive," and (2) that unitization of these wells is necessary in the interest of conservation, will not be sustained where there is a preponderance of substantial and persuasive evidence to support the Survey's findings.

Where Geological Survey has ordered all outer continental shelf lessees with producing wells in two delineated competitive reservoirs to comply with a plan to allocate production on the basis of percentage of original net acre-feet of gas sand, this order will be affirmed in the absence of a clear showing that another method of allocation is superior.

Tenneco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981)

OVERRIDING ROYALTIES

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which

OIL AND GAS LEASES--Continued

OVERRIDING ROYALTIES--Continued

the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(h).

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981)
88 I.D. 479

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

PRODUCTION

Where a unit agreement specifies that a determination whether a well completed prior to the effective date of the agreement is capable of producing in paying quantities will be deferred until completion of a well capable of producing in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

Determinations by Geological Survey delineating two communicating gas-bearing structures or sands and providing that unitization of leases producing gas from these sands is in the interest of conservation will be affirmed where the record shows that these determinations were reasonably based on facts of record.

A challenge to decisions by Geological Survey (1) that various outer continental shelf wells are producing from common reservoirs, *i.e.*, that they are "competitive," and (2) that unitization of these wells is necessary in the interest of conservation, will not be sustained where there is a preponderance of substantial and persuasive evidence to support the Survey's findings.

Where Geological Survey has ordered all outer continental shelf lessees with producing wells in two delineated competitive reservoirs to comply with a plan to allocate production on the basis of percentage of original net acre-feet of gas sand, this order will be affirmed in the absence of a clear showing that another method of allocation is superior.

Tenneco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of

OIL AND GAS LEASES--Continued

PRODUCTION--Continued

the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

Robert G. Lynn, 60 IBLA 117 (Nov. 24, 1981)

REINSTATEMENT

An oil and gas lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

The burden of proving that reasonable diligence was exercised or the lack of diligence was justified rests on the lessee. Where a lessee states that he mailed the rental payment to the proper BLM office well in advance of the due date but presents no corroborating evidence of the attempted payment, an oil and gas lease reinstatement petition is properly denied.

Stan F. Waliszek, 52 IBLA 101 (Jan. 12, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Oct. 1, 1980, bearing a postmark date of Sept. 30, 1980, does not reflect reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Speculation as to errors in post office mail processing does not constitute such extenuating circumstances as to make untimely payment of annual rental justified.

Elizabeth A. Christensen, 52 IBLA 113 (Jan. 13, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was timely paid. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payments the afternoon of the day due does not constitute reasonable diligence.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of the law and regulations and reliance on the business practices of other Governmental

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

agencies accepting a postmark as the date of delivery is not a justifiable excuse.

Overthrust Oil and Gas Corp., 52 IBLA 119 (Jan. 13, 1981) 88 I.D. 38

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not received by the Bureau of Land Management State Office on or before the anniversary date.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence.

Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment 12 days after it was due does not constitute reasonable diligence.

Absence from the country on a business trip at the time payment is due on a lease does not justify late payment of the rental. Early payment or other arrangements could be made to ensure timely payment.

Dorothy C. Axelson, 52 IBLA 146 (Jan. 16, 1981)

An oil and gas lease, terminated by operation of law for failure to timely pay the annual rental, will not be reinstated where the lessee mailed the rental payment to the wrong Bureau of Land Management office, where that office returned the payment in sufficient time for lessee to make timely payment in the proper office, but where the lessee failed to do so.

Energetics, Inc., 52 IBLA 236 (Feb. 3, 1981)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Silver Spring, Maryland, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

Jeannette L. Fenwick, 52 IBLA 250 (Feb. 6, 1981)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the Government from regarding the lease as having terminated.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

A late rental payment or an insufficient tender of rental may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy notices, and similar occurrences do not excuse a failure to exercise due diligence.

Martin Mattler, 53 IBLA 323 (Mar. 26, 1981)

88 I.D. 420

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When the lessee makes a sufficient showing that rental payment for an oil and gas lease was mailed 15 days before the date it is due, the lease will be reinstated because the late filing was not due to a lack of reasonable diligence.

Mary A. Barnett, 53 IBLA 328 (Mar. 26, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date.

Margaret Lee Firtle, 54 IBLA 113 (Apr. 16, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Transmittal of

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

payment 14 days after the due date does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. No justifiable excuse arises where a lessee has been specifically notified of the due date and through inadvertence fails timely to make payment.

Ralph W. M. Keating, 55 IBLA 113 (June 3, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. The fact that a lessee's accountant, responsible for submitting the rental payment, is overburdened with work will not justify reinstatement.

International Resource Enterprises, Inc., 55 IBLA 386 (June 30, 1981)

A petition for reinstatement of an oil and gas lease which has expired by operation of law for failure to make timely payment of the annual rental will be denied where the petition is filed with the appropriate office more than 15 days after receipt of notification of termination of the lease.

Absence from the country at the time payment is due on a lease does not justify late payment of the rental. Early payment or other arrangements could be made to ensure timely payment.

Michael Morrisroe, Jr., 56 IBLA 49 (July 8, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Untimely payment of annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date. Mailing the rental payment 1 day after the anniversary date of the lease does not constitute reasonable diligence.

Russell D. Brown, 56 IBLA 345 (Aug. 3, 1981)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Jan. 2, 1981, bearing a postmark date of the same day does not reflect reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment. Furthermore, where lessee presents no evidence to support a finding that the illness of an employee entrusted with making payment occurred at or near the anniversary date and with such causality to constitute sufficiently extenuating circumstances to justify late payment, lessee's petition for reinstatement must be denied.

Arnold L. Gilberg, 57 IBLA 46 (Aug. 17, 1981)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Shell Oil Co., 57 IBLA 63 (Aug. 17, 1981)

Where leases have been found by the Department to have terminated automatically by operation of law for lessee's failure to pay the annual rental, but private legislation is subsequently enacted providing that such leases shall be held not to have terminated and for payment by the lessee of "accrued" and "unpaid" rental by the lessee, a BLM decision that such renewal is due for the period from the date when the leases were treated as terminated to the date of the private enactment will be affirmed in the special circumstances obtaining in the case.

Fuel Resources Development Co., 57 IBLA 90 (Aug. 24, 1981)

Where a competitive, fractional interest, oil and gas lease is issued with conflicting and confusing rental provisions recited in the lease terms and in an attachment to the lease, a deficient rental payment by the lessee in reasonable reliance on the section providing for rental based upon the pro rata fractional interest of the United States will be considered justified so as to qualify the terminated lease for reinstatement.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981)
88 I.D. 279

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in New Jersey, 2 days before it is due in Reno, Nevada, does not constitute reasonable diligence.

Andrew H. Nelson, 58 IBLA 220 (Sept. 30, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, where the lessee has entrusted payment to an employee who is hospitalized because of an injury, and another employee who assumes the injured employee's responsibilities fails to make timely payment, the injury of the employee is not the proximate cause of the late payment.

Dome Petroleum Corp., 59 IBLA 370 (Nov. 9, 1981)
88 I.D. 1012

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days after the due date.

Harold E. Kurtz, Jr., 59 IBLA 387 (Nov. 10, 1981)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. The fact that appellant's employee mistakenly sent the courtesy notice to a corporation which was the assignee for part of the lease does not justify late payment.

Petrolero Corp., 60 IBLA 21 (Nov. 16, 1981)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

In order for a failure to pay rental timely to be justifiable, the late payment must be caused by factors outside of lessee's control which were the proximate

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

cause of the failure. Breakdowns in lessee's procedures for handling rental payments resulting from internal changes in lessee's operations do not establish justification for a late rental payment.

Southern Union Co., 60 IBLA 181 (Nov. 25, 1981)

Failure to pay the annual rental for an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Where the date marked on an envelope by a private postage meter conflicts with the postmark made by a United States post office, the United States postmark will be deemed the date of mailing in the absence of satisfactory corroborating evidence that the mailing occurred earlier.

Mailing a rental payment the afternoon of the day due does not constitute reasonable diligence.

Max W. Young, 60 IBLA 224 (Nov. 30, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by failure to receive a courtesy notice of rental due. Late payment is not justified by illness or other reasons, unless a lessee demonstrates that they were causative factors for delay in immediate proximity to the anniversary date of the lease.

Ruth Eloise Brown, 60 IBLA 328 (Dec. 18, 1981)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

is not tendered at the proper office within 20 days after the due date.

Jean Szczepanski, 60 IBLA 375 (Dec. 22, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

Helen T. Ayers, Roger Quintal, 61 IBLA 71 (Dec. 31, 1981)

RENTALS

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was timely paid. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payments the afternoon of the day due does not constitute reasonable diligence.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of the law and regulations and reliance on the business practices of other Governmental agencies accepting a postmark as the date of delivery is not a justifiable excuse.

Overthrust Oil and Gas Corp., 52 IBLA 119 (Jan. 13, 1981) 88 I.D. 38

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Where the offeror has failed to submit a signed check for the advance rental within the time allowed, he is properly disqualified to receive the lease.

William H. Bevis, 52 IBLA 125 (Jan. 13, 1981)

OIL AND GAS LEASES--ContinuedRENTALS--Continued

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Silver Spring, Maryland, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

Jeannette L. Fenwick, 52 IBLA 250 (Feb. 6, 1981)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976).

Otis Energy, Inc., 52 IBLA 316 (Feb. 19, 1981)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches eo instante.

Bureau of Land Management's cashing a late rental check and depositing it in an unearned account does not constitute acceptance of the rental payment.

Robert E. Bergman and Evan V. Bergman, 53 IBLA 122 (Mar. 5, 1981)

An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental because, although the lessee claims to have mailed timely the rental together with other payments which were received, the rental check cannot be found.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

Shell Oil Co., 57 IBLA 63 (Aug. 17, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When the lessee makes a sufficient showing that rental payment for an oil and gas lease was mailed 15 days before the date it is due, the lease will be reinstated because the late filing was not due to a lack of reasonable diligence.

Mary A. Barnett, 53 IBLA 328 (Mar. 26, 1981)

OIL AND GAS LEASES--ContinuedRENTALS--Continued

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent. Pursuant to 43 CFR 3130.2-1, rentals are not properly prorated for any lands in which the United States owns an undivided fractional interest, but shall be payable at the same rate as provided for the full acreage in such lands.

A noncompetitive oil and gas lease offer filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

Thomas F. Keating, 53 IBLA 349 (Mar. 30, 1981)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit the advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, notwithstanding the fact that at the time of the notice the Secretary had suspended the Bureau of Land Management's authority to issue noncompetitive oil and gas leases until further notice. However, if the first-drawn applicant files a notice of appeal within that time period, the time period is suspended and following affirmation of Bureau of Land Management's decision, the first-drawn applicant is properly given the entire time period from receipt of the Board's decision within which to submit the rental.

Robert A. Shryock, Jas. O. Breene, Jr., 55 IBLA 74 (June 1, 1981)

Where the rental payment accompanying a noncompetitive oil and gas lease offer is deficient by \$3, less than 10 percent, and Bureau of Land Management requests submission of the deficient rental along with execution of special stipulations, within 30 days, BLM may properly reject the lease offer when the additional rental is not submitted within the 30 days, although signed stipulations were timely submitted.

Dean W. Rowell, 55 IBLA 301 (June 26, 1981)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Thomas Connell, 56 IBLA 23 (June 30, 1981)

Where leases have been found by the Department to have terminated automatically by operation of law for lessee's failure to pay the annual rental, but private legislation is subsequently enacted providing that such leases shall be held not to have terminated and for payment by the lessee of "accrued" and "unpaid" rental by the lessee, a BLM decision that such renewal is due for the period from the date when the leases were treated as terminated to the date of the private enactment will be affirmed in the special circumstances obtaining in the case.

Fuel Resources Development Co., 57 IBLA 90 (Aug. 24, 1981)

OIL AND GAS LEASES--ContinuedRENTALS--Continued

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where an official BLM record does not reflect any payment for advance first-year annual rental for an oil and gas lease but does contain a dated statement by BLM's receiving clerk indicating that no money was received when the lease applicant filed her offer with BLM, it is presumed that no payment was made, in the absence of a clear showing to the contrary by the applicant.

Where, following adjudication of her simultaneous noncompetitive oil and gas lease application, an applicant fails to submit advance first-year rental along with paperwork for the lease agreement within 30 days from her receipt of notice to do so, as required by 43 CFR 3112.4-1(a), her application is properly rejected under 43 CFR 3112.6-1(d).

Theresa Jibilian, 57 IBLA 354 (Sept. 8, 1981)

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear showing that the determination was improperly made, nor will the applicable rental be reduced without such showing.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1).

Amtra Oil and Gas Co., 58 IBLA 67 (Sept. 22, 1981)

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 15 days after receipt of a notice that payment was due, as prescribed by 43 CFR 3112.4-1 (1979), disqualification of the offer is automatic.

Arthur Ancowitz, 58 IBLA 112 (Sept. 24, 1981)

Where a competitive, fractional interest, oil and gas lease is issued with conflicting and confusing rental provisions recited in the lease terms and in an attachment to the lease, a deficient rental payment by the lessee in reasonable reliance on the section providing for rental based upon the pro rata fractional interest of the United States will be considered justified so as to qualify the terminated lease for reinstatement.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981)
88 I.C. 879

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account

OIL AND GAS LEASES--Continued

RENTALS--Continued

for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in New Jersey, 2 days before it is due in Reno, Nevada, does not constitute reasonable diligence.

Andrew H. Nelson, 58 IBLA 220 (Sept. 30, 1981)

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Keith B. Livermore, 59 IBLA 232 (Oct. 28, 1981)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days after the due date.

Harold E. Kurtz, Jr., 59 IBLA 387 (Nov. 10, 1981)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. The fact that appellant's employee mistakenly sent the courtesy notice to a corporation which was the assignee for part of the lease does not justify late payment.

Petrolero Corp., 60 IBLA 21 (Nov. 16, 1981)

An oil and gas lease on which there is no well capable of production terminates automatically by operation of law if the lessee pays only part of the annual rental due on or before the anniversary date of the lease, and if the deficiency in this payment was not nominal and did not result from any incorrect information in a rental bill or decision.

BLM has satisfied its burden of giving notice of the inclusion of leased lands in a KGS and of the concomitant increase in annual rental to \$2 per acre or fraction thereof when it notifies the lessees of record, regardless of its failure to notify the holder of operating rights under the lease.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

An oil and gas lease embracing lands committed to a subsurface storage agreement, but on which there is no production, terminates by operation of law when the annual rental payment is not timely made.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

OIL AND GAS LEASES--Continued

RENTALS--Continued

30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

In order for a failure to pay rental timely to be justifiable, the late payment must be caused by factors outside of lessee's control which were the proximate cause of the failure. Breakdowns in lessee's procedures for handling rental payments resulting from internal changes in lessee's operations do not establish justification for a late rental payment.

Southern Union Co., 60 IBLA 181 (Nov. 25, 1981)

Failure to pay the annual rental for an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Where the date marked on an envelope by a private postage meter conflicts with the postmark made by a United States post office, the United States postmark will be deemed the date of mailing in the absence of satisfactory corroborating evidence that the mailing occurred earlier.

Max W. Young, 60 IBLA 224 (Nov. 30, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Ruth Eloise Brown, 60 IBLA 328 (Dec. 18, 1981)

Where a timely rental payment for a nonproducing oil and gas lease is nominally deficient in the amount of 24 cents, such lease is not automatically terminated if the notice of deficiency, is not served on the attorney who has notified BLM that he represents the estate of the deceased lessee. In instances where an attorney has made an appearance of record, the attorney should be recognized as controlling the matter on behalf of his client, and service of any documents relating to that matter should be made on the attorney so that he may take timely and appropriate actions on behalf of his client.

Y. George Harris, 60 IBLA 366 (Dec. 22, 1981)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Jean Szczepanski, 60 IBLA 375 (Dec. 22, 1981)

RIGHTS-OF-WAY LEASES

Under the "notation rule," where a reservoir right-of-way affecting certain land is noted on the official records of the Bureau of Land Management, that notation is effective to bar leasing of the oil and gas therein under the Mineral Leasing Act of 1920. This result follows even if the reservoir right-of-way should have been terminated.

RDM Interests, 57 IBLA 163 (Aug. 27, 1981)

ROYALTIES

The Secretary of the Interior has discretionary authority to determine the factors to be considered in computing transportation allowances for royalty valuation purposes. Where the Geological Survey applies a formula developed after appropriate research and consultation with affected oil companies and where the appellant does not provide convincing evidence that the 6 percent rate of return used in the formula is unreasonable as applied to appellant's production from 1968 to 1973, the transportation allowance will be upheld.

Shell Oil Co., 52 IBLA 15 (Jan. 5, 1980) 88 I.D. 1

In determining the amount of royalty due to the United States from an oil and gas lease, it is proper for the Geological Survey to use a base value which includes both the purchase price paid for the natural gas and the amount of severance taxes paid by the purchaser directly to the State where, under Oklahoma law, the purchaser is authorized to deduct the amount of taxes paid from the amount paid to the producer. Decision in Whelless Drilling Co., 13 IBLA 21, 80 I.D. 599 (1973), cited and applied.

Hoover & Bracken Energies, Inc., 52 IBLA 27 (Jan. 5, 1981) 88 I.D. 7

Where a Geological Survey audit reveals that an offshore oil and gas producer has overpaid royalties in one month and underpaid royalties in the next month, it is proper to offset these two amounts against the other despite the fact that the audit was performed some 4 years after the transactions at issue.

Shell Oil Co., 52 IBLA 74 (Jan. 9, 1981)

In determining the amount of royalty due to the United States from an oil and gas lease, it is proper for the Geological Survey to use a base value which includes both the purchase price paid for the natural gas and the amount of severance taxes paid by the purchaser directly to the State where, under Oklahoma law,

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

the purchaser is authorized to deduct the amount of taxes paid from the amount paid to the producer.

Michigan Wisconsin Pipeline Co., Inc., 54 IBLA 190 (Apr. 22, 1981)

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

An appellant who challenges a determination by the Geological Survey as to the value of gas or other hydrocarbons produced from a Federal oil and gas lease must show not merely that the methodology utilized by Geological Survey is susceptible to error; it must show that error did, in fact, occur.

An Area Supervisor's order which requires that royalty be based on either the price specified in the order or the amount actually received, whichever is greater, comports with all regulatory requirements as to definitiveness and finality.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

STIPULATIONS

Under the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1976), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, such as the Bureau of Reclamation (now the Water and Power Resources Service), the consent of the Secretary of the Interior is necessary under the Act for leasing of the land.

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation (now the Water and Power Resources Service) requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, such stipulation must be supported by valid reasons weighed with due regard for the public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

Mardam Exploration, Inc., 52 IBLA 296 (Feb. 9, 1981)

The Bureau of Land Management may require execution of a no surface occupancy stipulation prior to issuance of a noncompetitive oil and gas lease only where there is evidence that less stringent alternatives would not adequately accomplish the intended purpose of avoiding erosion and protecting the recreational and scenic value of an area.

Melvin A. Brown, 53 IBLA 45 (Feb. 27, 1981)

Where the Bureau of Land Management requests an offeror for a noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and archaeological resources on the leased lands within 30 days, it may properly reject the lease

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

offer when the special stipulations are not executed and submitted within the 30 days.

Arthur Ancowitz, 53 IBLA 69 (Mar. 2, 1981)

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James E. Sullivan, 54 IBLA 1 (Apr. 1, 1981)

Rejection of an oil and gas lease offer is a more severe measure than the most stringent stipulations and the record supporting a decision rejecting a lease offer in the public interest should ordinarily reflect consideration of whether leasing subject to clear and reasonable stipulations would adequately protect the public interest concerns of the surface management agency.

Esdras K. Hartley, 54 IBLA 38 (Apr. 9, 1981) 88 I.D. 437

Although the Bureau of Land Management may require such special stipulations as are necessary for protection of the lands embraced in any oil and gas lease, such special stipulations must be supported by valid reasons weighed by the Department with due regard for the public interest. A decision to impose a no surface occupancy stipulation will be set aside and the case remanded where there is no data in the record to support the decision and no indication that less stringent stipulations were considered.

Max B. Lewis, 56 IBLA 293 (July 28, 1981)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

John R. Anderson, 57 IBLA 149 (Aug. 25, 1981)

Where an acquired lands noncompetitive oil and gas lease offer is partially rejected on the basis of a recommendation made by the Bureau of Reclamation and merely concurred in by the Forest Service and on appeal the offeror alleges that the present policy of the Bureau of Reclamation is to lease with appropriate stipulations and the record fails to support adequately the original recommendation, the case will be remanded in order to determine whether a lease may issue for such lands.

Esdras K. Hartley, 57 IBLA 293 (Aug. 31, 1981)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

The Secretary of the Interior may require an oil and gas lease applicant to accept a stipulation reasonably designed to protect a duly established subsurface oil and gas storage area as a condition precedent to the issuance of a lease.

M. Robert Paglee, 59 IBLA 192 (Oct. 27, 1981)

SUBSURFACE STORAGE

Under sec. 17(j) of the Mineral Leasing Act the Secretary of the Interior may authorize the subsurface storage of oil and gas in lands leased or subject to leasing under the Act. Where an oil and gas lease applicant applies for lands underlain by such a storage area he may properly be required to execute a stipulation for the protection of the storage area.

The Secretary of the Interior may require an oil and gas lease applicant to accept a stipulation reasonably designed to protect a duly established subsurface oil and gas storage area as a condition precedent to the issuance of a lease.

M. Robert Paglee, 59 IBLA 192 (Oct. 27, 1981)

An oil and gas lease embracing lands committed to a subsurface storage agreement, but on which there is no production, terminates by operation of law when the annual rental payment is not timely made.

Southern Union Co., 60 IBLA 181 (Nov. 25, 1981)

SUSPENSIONS

A competitive oil and gas lease is properly issued for a primary term of 5 years. Where an application for suspension of production requirements for a lease on which there is no well capable of producing in paying quantities is not timely filed in accordance with 43 CFR 3103.3-8 before the expiration date of the lease, the lease automatically terminates.

Coronado Oil Co., 52 IBLA 308 (Feb. 10, 1981)

A nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of expiration.

Coseka Resources (U.S.A.), Ltd., 56 IBLA 19 (June 30, 1981)

Teton Energy Co., Inc., 61 IBLA 47 (Dec. 31, 1981)

An oil and gas lessee's request for suspension of production of an oil and gas lease may properly be granted in circumstances where the lessee submits a schedule of work that, in this instance, can be considered as expeditious as possible and that will lead to initiation or restoration of production sufficient for compliance with 30 CFR 250.12(b), as amended.

Superior Oil Co., 57 IBLA 404 (Sept. 14, 1981)

OIL AND GAS LEASES--Continued

TERMINATION

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Oct. 1, 1980, bearing a postmark date of Sept. 30, 1980, does not reflect reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Speculation as to errors in post office mail processing does not constitute such extenuating circumstances as to make untimely payment of annual rental justified.

Elizabeth A. Christensen, 52 IBLA 113 (Jan. 13, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was timely paid. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Overthrust Oil and Gas Corp., 52 IBLA 119 (Jan. 13, 1981) 88 I.D. 38

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not received by the Bureau of Land Management State Office on or before the anniversary date.

Dorothy C. Axelson, 52 IBLA 146 (Jan. 16, 1981)

An oil and gas lease, terminated by operation of law for failure to timely pay the annual rental, will not be reinstated where the lessee mailed the rental payment to the wrong Bureau of Land Management office, where that office returned the payment in sufficient time for lessee to make timely payment in the proper office, but where the lessee failed to do so.

Energetics, Inc., 52 IBLA 236 (Feb. 3, 1981)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Jeannette L. Fenwick, 52 IBLA 250 (Feb. 6, 1981)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

A competitive oil and gas lease is properly issued for a primary term of 5 years. Where an application for suspension of production requirements for a lease on which there is no well capable of producing in paying quantities is not timely filed in accordance with 43 CFR 3103.3-8 before the expiration date of the lease, the lease automatically terminates.

Coronado Oil Co., 52 IBLA 308 (Feb. 10, 1981)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976).

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

A purported assignment of an oil and gas lease does not relieve the lessee of record of the responsibility to make timely payment of all rentals until such assignment is formally approved by BLM.

Otis Energy, Inc., 52 IBLA 316 (Feb. 19, 1981)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981)

An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental because, although the lessee claims to have mailed timely the rental together with other payments which were received, the rental check cannot be found.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the Government from regarding the lease as having terminated.

No assignment can be approved for a terminated oil and gas lease.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

A State Office properly holds that a noncompetitive oil and gas lease expires at the end of its primary term when there is no cognizable activity on the leased lands as of that date under 30 U.S.C. § 226(e) (1976), and the unit or cooperative provisions of 30 U.S.C. § 226(j) have not operated to extend the lease.

Pacific Transmission Supply Co. and Raymond Chorney, 53 IBLA 204 (Mar. 18, 1981)

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

Upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law.

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

A late rental payment or an insufficient tender of rental may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy notices, and similar occurrences do not excuse a failure to exercise due diligence.

Martin Mattler, 53 IBLA 323 (Mar. 26, 1981) 88 I.D. 420

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date.

Margaret Lee Pirtle, 54 IBLA 113 (Apr. 16, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Transmittal of payment 14 days after the due date does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. No justifiable excuse arises where a lessee has been specifically notified of the due date and through inadvertence fails timely to make payment.

Ralph W. M. Keating, 55 IBLA 113 (June 3, 1981)

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

Where a unit agreement specifies that a determination whether a well completed prior to the effective date of the agreement is capable of producing in paying quantities will be deferred until completion of a well capable of producing in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or, for the lease under an approved unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. The fact that a lessee's accountant, responsible for submitting the rental payment, is overburdened with work will not justify reinstatement.

International Resource Enterprises, Inc., 55 IBLA 386 (June 30, 1981)

A nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of expiration.

Coseka Resources (U.S.A.), Ltd., 56 IBLA 19 (June 30, 1981)

Teton Energy Co., Inc., 61 IBLA 47 (Dec. 31, 1981)

A petition for reinstatement of an oil and gas lease which has expired by operation of law for failure to make timely payment of the annual rental will be denied where the petition is filed with the appropriate office more than 15 days after receipt of notification of termination of the lease.

Michael Morrisroe, Jr., 56 IBLA 49 (July 8, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Untimely payment of annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the

OIL AND GAS LEASES--Continued

TERMINATION--Continued

date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date. Mailing the rental payment 1 day after the anniversary date of the lease does not constitute reasonable diligence.

Russell D. Brown, 56 IBLA 345 (Aug. 3, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Jan. 2, 1981, bearing a postmark date of the same day does not reflect reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment. Furthermore, where lessee presents no evidence to support a finding that the illness of an employee entrusted with making payment occurred at or near the anniversary date and with such causality to constitute sufficiently extenuating circumstances to justify late payment, lessee's petition for reinstatement must be denied.

Arnold L. Gilberg, 57 IBLA 46 (Aug. 17, 1981)

An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental because, although the lessee claims to have mailed timely the rental together with other payments which were received, the rental check cannot be found.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Shell Oil Co., 57 IBLA 63 (Aug. 17, 1981)

Where leases have been found by the Department to have terminated automatically by operation of law for lessee's failure to pay the annual rental, but private legislation is subsequently enacted providing that such leases shall be held not to have terminated and for payment by the lessee of "accrued" and "unpaid" rental by the lessee, a BLM decision that such renewal is due for the period from the date when the leases were treated as terminated to the date of the private enactment will be affirmed in the special circumstances obtaining in the case.

Fuel Resources Development Co., 57 IBLA 90 (Aug. 24, 1981)

Where a competitive, fractional interest, oil and gas lease is issued with conflicting and confusing rental provisions recited in the lease terms and in an attachment to the lease, a deficient rental payment by the lessee in reasonable reliance on the section providing for rental based upon the pro rata fractional

OIL AND GAS LEASES--Continued

TERMINATION--Continued

interest of the United States will be considered justified so as to qualify the terminated lease for reinstatement.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981)
88 I.D. 879

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Andrew H. Nelson, 58 IBLA 220 (Sept. 30, 1981)

Where the record shows that, at the end of the primary term of a noncompetitive oil and gas lease, there is no active production of oil or gas in paying quantities from the lease area and no well capable of such production, the lease terminates automatically by operation of law as of the expiration date of the lease, in the absence of allegations by the lessee that there was such production or a well capable of such production.

Assuming, arguendo, that an oil and gas lease area contained a well capable of production of oil or gas in paying quantities on its expiration date, the lease terminates automatically as of this date if the lessee fails to comply with a 60-day notice from Geological Survey to put this well into production. An alleged filing of information showing production 2 years after the expiration of the 60-day notice period would not resuscitate the lease.

Where an oil and gas lease has already terminated by operation of law, the subsequent issuance by Geological Survey of a 60-day notice to produce does not renew the lease.

Edward W. Coltharp, Dale F. Killian, 58 IBLA 234 (Oct. 6, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, where the lessee has entrusted payment to an employee who is hospitalized because of an injury, and another employee who assumes the injured employee's responsibilities fails to make timely payment, the injury of the employee is not the proximate cause of the late payment.

Dome Petroleum Corp., 59 IBLA 370 (Nov. 9, 1981)
88 I.D. 1012

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

An oil and gas lease on which there is no well capable of production terminates automatically by operation of law if the lessee pays only part of the annual rental due on or before the anniversary date of the lease, and if the deficiency in this payment was not nominal and did not result from any incorrect information in a rental bill or decision.

BLM has satisfied its burden of giving notice of the inclusion of leased lands in a KGS and of the concomitant increase in annual rental to \$2 per acre or fraction thereof when it notifies the lessees of record, regardless of its failure to notify the holder of operating rights under the lease.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

An oil and gas lease embracing lands committed to a subsurface storage agreement, but on which there is no production, terminates by operation of law when the annual rental payment is not timely made.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Southern Union Co., 60 IBLA 181 (Nov. 25, 1981)

Failure to pay the annual rental for an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Max W. Young, 60 IBLA 224 (Nov. 30, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Ruth Eloise Brown, 60 IBLA 328 (Dec. 18, 1981)

Pursuant to 30 U.S.C. § 188(b) (1976) an oil and gas lease will not automatically terminate when an annual rental payment is deficient if the deficiency is nominal. A deficiency is nominal if it is not more than \$10 or 5 percent of the total payment due, whichever is more.

Where a timely rental payment for a nonproducing oil and gas lease is nominally deficient in the amount of 24 cents, such lease is not automatically terminated

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

if the notice of deficiency, is not served on the attorney who has notified BLM that he represents the estate of the deceased lessee. In instances where an attorney has made an appearance of record, the attorney should be recognized as controlling the matter on behalf of his client, and service of any documents relating to that matter should be made on the attorney so that he may take timely and appropriate actions on behalf of his client.

Y. George Harris, 60 IBLA 366 (Dec. 22, 1981)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Reliance upon receiving a courtesy billing notice before the due date can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

Jean Szczepanski, 60 IBLA 375 (Dec. 22, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

Helen T. Ayers, Roger Quintal, 61 IBLA 71 (Dec. 31, 1981)

UNIT AND COOPERATIVE AGREEMENTS

A determination by the Geological Survey to include certain land within the participating area of a producing oil or gas well established pursuant to an approved unit agreement will not be set aside where it is not arbitrary or capricious and is supported by competent evidence, and the appellant has not demonstrated by a clear and definite showing that the determination was in error.

When the Geological Survey determines that certain lands have been reasonably proven to be productive in paying quantities and approves a revision to a participating area to include those lands, later exclusion of the lands must be based on a finding that the lands did not contain unitized substances in paying quantities. Mechanical failure of a well on these lands and resulting failure to produce does not support exclusion.

Davis Oil Co., 53 IBLA 62 (Mar. 2, 1981)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant therefor. An extension of time may be granted to supply necessary evidence of joinder in a unit agreement prior to lease issuance and a lease offer will not be rejected in favor of a junior offeror where an extension is timely requested and the requested evidence is provided in good faith and without unreasonable delay thereafter.

Barbara J. Niernberger, Thomas H. Connolly, 53 IBLA 112 (Mar. 4, 1981) 88 I.D. 347

Where a unit agreement specifies that a determination whether a well completed prior to the effective date of the agreement is capable of producing in paying quantities will be deferred until completion of a well capable of producing in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or, for the lease under an approved unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

Determinations by Geological Survey delineating two communicating gas-bearing structures or sands and providing that unitization of leases producing gas from these sands is in the interest of conservation will be affirmed where the record shows that these determinations were reasonably based on facts of record.

A challenge to decisions by Geological Survey (1) that various outer continental shelf wells are producing from common reservoirs, i.e., that they are "competitive," and (2) that unitization of these wells is necessary in the interest of conservation, will not be sustained where there is a preponderance of substantial and persuasive evidence to support the Survey's findings.

Where Geological Survey has ordered all outer continental shelf lessees with producing wells in two delineated competitive reservoirs to comply with a plan to allocate production on the basis of percentage of original net acre-feet of gas sand, this order will be affirmed in the absence of a clear showing that another method of allocation is superior.

Tenneco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981)

WELL CAPABLE OF PRODUCTION

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981)

OIL AND GAS LEASES--Continued

WELL CAPABLE OF PRODUCTION--Continued

Where a unit agreement specifies that a determination whether a well completed prior to the effective date of the agreement is capable of producing in paying quantities will be deferred until completion of a well capable of producing in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

Where the record shows that, at the end of the primary term of a noncompetitive oil and gas lease, there is no active production of oil or gas in paying quantities from the lease area and no well capable of such production, the lease terminates automatically by operation of law as of the expiration date of the lease, in the absence of allegations by the lessees that there was such production or a well capable of such production.

Assuming, arguendo, that an oil and gas lease area contained a well capable of production of oil or gas in paying quantities on its expiration date, the lease terminates automatically as of this date if the lessee fails to comply with a 60-day notice from Geological Survey to put this well into production. An alleged filing of information showing production 2 years after the expiration of the 60-day notice period would not resuscitate the lease.

Where an oil and gas lease has already terminated by operation of law, the subsequent issuance by Geological Survey of a 60-day notice to produce does not renew the lease.

Edward H. Colthart, Dale F. Killian, 58 IBLA 234 (Oct. 6, 1981)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED CCCS BAY GRANT LANDS

GENERALLY

Lands which were revested under the Act of June 9, 1916, 39 Stat. 218, and were subsequently conveyed to private owners do not regain their status as revested O&C lands upon a later reconveyance back to the United States.

Junior L. Dennis, 61 IBLA 8 (Dec. 29, 1981)

OUTER CONTINENTAL SHELF LANDS ACT

(See also Oil & Gas Leases--if included in this Index.)

GENERALLY

Use of consultation procedures of sec. 18 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344 (Supp. II 1978), are not required for annual review of an approved 5-year CCS leasing program under sec. 18(e) of the Act.

Under sec. 18 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344 (Supp. II 1978), a reapproval must include a schedule of proposed lease sales for the full 5-year period following reapproval but may not include sales beyond the 5-year period. A revision permits changes within an existing approved schedule without requiring an extension of that schedule to include a full 5 years after revision.

Under sec. 18 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344 (Supp. II 1978), a revision may

OUTER CONTINENTAL SHELF LANDS ACT--Continued

GENERALLY--Continued

add, delete, delay or advance sales and planning milestones within an approved 5-year program. A revision cannot be used to tack additional sales or milestones onto the end of an approved 5-year program. Only a reapproval can add sales beyond an existing approved program.

Sec. 18(e) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344(e) (Supp. II 1978), states in discussing revisions and reapprovals that only a revision which is not significant may escape the requirement of sec. 18 consultation procedures. A fortiori, all reapprovals require use of these procedures. Therefore, the procedures must be followed to schedule any sales or milestones beyond the existing 5-year program.

Under sec. 18 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344 (Supp. II 1978), the Secretary has considerable discretion to determine whether or not the deletion, delay or advancement of sales or milestones within an approved 5-year program is a significant revision.

Planning milestones and sale dates beyond the 5-year horizon can be made available as a matter of information, but final approval of a schedule containing such sales cannot occur until the procedures of sec. 18 have been followed. Those milestones occurring within the 5-year period that apply to sales expected beyond 5 years may be included in a reapproved schedule.

Annual Review, Revision and Reapproval of 5-Year OCS Oil and Gas Leasing Programs, M-36932 (Jan. 5, 1981) 88 I.D. 20

An application to purchase offshore royalty oil, submitted in response to a notice published in the Federal Register on Jan. 14, 1980, is properly rejected where the applicant's runs to stills per calendar day exceed the applicant's refining capacity per calendar day.

Quitman Refining Co., 57 IBLA 53 (Aug. 17, 1981)

An application to purchase offshore royalty oil, submitted in response to a notice published in the Federal Register on Jan. 14, 1980, is properly rejected where the refinery capacity presented in the application was not certified by the Economic Regulatory Administration as operable on or before Apr. 1, 1980, as required by the notice of sale.

Isthmus Refining Corp., 60 IBLA 331 (Dec. 22, 1981)

Limitation of a small refiner's allocation in a sale of Outer Continental Shelf royalty oil under sec. 27(b)(2) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. § 1353(b)(2) (Supp. II 1978), to excess refinery capacity, as determined by subtracting the volume of oil actually refined in a representative period from the applicant's refinery capacity, is both reasonable and consistent with the statutory authority.

Mid-America Refining Co., 61 IBLA 84 (Dec. 31, 1981)

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS INFORMATION PROGRAM

Generally

30 CFR 250.3, requiring the U.S. Geological Survey to release a lessee's well logs two years after they are submitted, is a reasonable exercise of the Secretary's discretion. It does not apply to the Survey's findings of producibility under OCS Order No. 4; such findings may consequently be released immediately.

The history and text of the 1978 Amendments show that "privileged or proprietary information" is a term to be defined by the Secretary after balancing competing interests of disclosure and confidentiality.

Whether the U.S. Geological Survey May Make Public Certain Information About Offshore Oil and Gas Wells, M-36925 (Nov. 24, 1980) 88 I.D. 699

OIL AND GAS LEASES

The Secretary of the Interior has discretionary authority to determine the factors to be considered in computing transportation allowances for royalty valuation purposes. Where the Geological Survey applies a formula developed after appropriate research and consultation with affected oil companies and where the appellant does not provide convincing evidence that the 6 percent rate of return used in the formula is unreasonable as applied to appellant's production from 1968 to 1973, the transportation allowance will be upheld.

Shell Oil Co., 52 IBLA 15 (Jan. 5, 1980) 88 I.D. 1

Determinations by Geological Survey delineating two communicating gas-bearing structures or sands and providing that unitization of leases producing gas from these sands is in the interest of conservation will be affirmed where the record shows that these determinations were reasonably based on facts of record.

A challenge to decisions by Geological Survey (1) that various outer continental shelf wells are producing from common reservoirs, i.e., that they are "competitive," and (2) that unitization of these wells is necessary in the interest of conservation, will not be sustained where there is a preponderance of substantial and persuasive evidence to support the Survey's findings.

Where Geological Survey has ordered all outer continental shelf lessees with producing wells in two delineated competitive reservoirs to comply with a plan to allocate production on the basis of percentage of original net acre-feet of gas sand, this order will be affirmed in the absence of a clear showing that another method of allocation is superior.

Tenneco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981)

REFUNDS

Where a Geological Survey audit reveals that an offshore oil and gas producer has overpaid royalties in one month and underpaid royalties in the next month, it is proper to offset these two amounts against the other despite the fact that the audit was performed some 4 years after the transactions at issue.

Shell Oil Co., 52 IBLA 74 (Jan. 9, 1981)

OUTER CONTINENTAL SHELF LANDS ACT--Continued

REFUNDS--Continued

Sec. 10 of the Outer Continental Shelf Lands Act does not authorize refunds to purchasers of royalty oil.

Sec. 10 of the Outer Continental Shelf Lands Act does not authorize refunds to persons who have paid a civil penalty under sec. 24 of the Act.

Before allowing refunds or credits against future payments, the Secretary must report them to Congress.

The request for a refund or credit must be in writing, must ask for a specific amount, and must explain why the lessee considers the amount to have been excessive. Except under certain circumstances, the lessee must request the refund or credit within two years after making the payment. Those circumstances are when the lessee both has acted to verify his account within two years and has given the Department enough information to estimate the potential amount of the refund or credit.

An excess net profit share payment, to be credited under 10 CFR 390.034(c), must be reported to Congress before crediting.

Generally, when one co-lessee files a request for repayment, his request does not toll the two-year limit for other co-lessees. But if the co-lessee has the authority to make all lease payments for the other co-lessees, then his request protects all of them.

A lessee may receive a refund or credit of an overpayment even though he did not pay the excess under protest.

Upon discovering an overpayment and an underpayment in a lease account, the Secretary may properly offset the two without regard to sec. 10. But when an excess remains after the offset, the Secretary must comply with sec. 10 in giving a refund or credit.

Refunds and Credits Under the Outer Continental Shelf Lands Act, M-36942 (Dec. 15, 1981) 88 I.D. 1090

UNIT PLANS

Determinations by Geological Survey delineating two communicating gas-bearing structures or sands and providing that unitization of leases producing gas from these sands is in the interest of conservation will be affirmed where the record shows that these determinations were reasonably based on facts of record.

A challenge to decisions by Geological Survey (1) that various outer continental shelf wells are producing from common reservoirs, *i.e.*, that they are "competitive," and (2) that unitization of these wells is necessary in the interest of conservation, will not be sustained where there is a preponderance of substantial and persuasive evidence to support the Survey's findings.

Where Geological Survey has ordered all outer continental shelf lessees with producing wells in two delineated competitive reservoirs to comply with a plan to allocate production on the basis of percentage of original net acre-feet of gas sand, this order will be affirmed in the absence of a clear showing that another method of allocation is superior.

Tenneco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981)

PATENTS OF PUBLIC LANDS

GENERALLY

If the record does not contain sufficient evidence to persuade the Secretary or his authorized officers that the law has been complied with, the Department cannot legally grant the gratuity which claimants request, *i.e.*, issuance of a mineral patent.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

AMENDMENTS

Under sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. BLM's rejection of an application to amend a homestead patent to change the legal description of the land patented will be affirmed where the record does not support a finding that the entryman erred in describing the lands he had entered.

Ben R. Williams, 57 IBLA 8 (Aug. 5, 1981)

EFFECT

The effect of the issuance of a patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Where BLM's records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Mary Patricia Anne Newman Gibson et al., 52 IBLA 216 (Jan. 30, 1981) 88 I.D. 244

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected.

Cleotilde Padilla, 52 IBLA 248 (Feb. 6, 1981)

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Samuel Lee Gifford et al. (On Reconsideration), 55 IBLA 1 (May 21, 1981)

Lula Lorene McCracken Slowey, 58 IBLA 202 (Sept. 29, 1981)

Jimmy Lorn Gibson, 59 IBLA 170 (Oct. 26, 1981)

PATENTS OF PUBLIC LANDS--ContinuedEFFECT--Continued

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), for such lands, is properly rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

RESERVATIONS

Patents issued pursuant to the Act of Mar. 3, 1909, or the Act of June 22, 1910, 30 U.S.C. §§ 81, 83-85 (1976) reserved to the United States "all coal" and the right to prospect for, mine and remove the "coal deposits" underlying the patented lands. Congress in the 1909 and 1910 Acts intended to, and did, reserve only the coal and not other minerals found in association with coal. Accordingly, all minerals other than coal, including coalbed gas, passed to the surface owner at the time a patent was issued pursuant to the 1909 or 1910 Acts.

Should coalbed gas occur in lands in which "oil and gas" were reserved to the United States in agricultural patents issued under the Act of July 17, 1914, 30 U.S.C. § 121 (1976), that coalbed gas is reserved to the United States.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981)

88 I.D. 538

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1976), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976). However, in a case where scoria is used no differently from common earth, the record must demonstrate that the deposit of scoria has commercial value independent of such use.

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

PAYMENTS

(See also Accounts--if included in this Index.)

GENERALLY

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

W. W. Priest, Michael Manduca, 55 IBLA 398 (June 30, 1981)

A personal check is not an acceptable form of remittance under 43 CFR 3120.1-4(b) requiring a successful bidder to submit one-fifth of the amount bid as a deposit and must result in rejection of the competitive bid.

Pelco Petroleum Corp., 57 IBLA 3 (Aug. 5, 1981)

PHOSPHATE LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

PERMITS

Limitation of a phosphate prospecting permit to "unclaimed, undeveloped" lands restricts it to lands without valid, vested rights, existing at the time of issuance of the permit, which are adverse to the prospecting permit which is sought, and any preference right lease which may be earned pursuant to such a permit.

A prospecting permit may be issued for phosphate for which there is no valid, adverse claim at the time of issuance, notwithstanding the existence then of non-adverse claims, entries, or leases.

Issuance of a prospecting permit is presumed to be regular if no valid, adverse interest appeared in the land office records at the time of issuance of the permit.

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits and Preference Right Leases for Coal and Phosphate (Modifying Solicitor's Opinion M-36893 of Aug. 2, 1977, and its Supplement of Nov. 19, 1979, upon the same subject): The "Unclaimed, Undeveloped" Issue, M-36893 (Supp. II) (Jan. 8, 1981)

88 I.D. 247

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent of

PHOSPHATE LEASES AND PERMITS--Continued

PERMITS--Continued

workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

It is unnecessary to demonstrate the workability of a mineral deposit by an actual physical examination of the deposit in the land sought by means of drilling or actual exploratory work on the ground. Competent evidence to establish the fact that exploration is unnecessary to determine the existence or workability of a phosphate deposit may consist of proof of the existence of minerals in adjacent lands and of geological and other surrounding external conditions.

Christian F. Murer, 57 IBLA 333 (Sept. 1, 1981)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981)

POWERSITE LANDS

When a Native allotment application has been rejected because the applicant failed to complete 5 years of qualifying use and occupancy prior to the filing of an application for withdrawal for powersite purposes, the case will be remanded for readjudication under sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), unless the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by act of Congress. If the allotment applicant commenced the qualifying use of the land after its withdrawal or classification, the allotment shall be made subject to the right of reentry provided the United States.

William Carlo, Sr. (On Reconsideration), 53 IBLA 168 (Mar. 12, 1981)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

John C. Farrell, 55 IBLA 42 (May 28, 1981)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Larry D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

PRACTICE BEFORE THE DEPARTMENT

(See also Rules of Practice--if included in this Index.)

PERSONS QUALIFIED TO PRACTICE

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by a corporation that does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

Allen Duncan, 53 IBLA 101 (Mar. 4, 1981) 88 I.L. 345

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

Verne G. Long, 57 IBLA 263 (Aug. 28, 1981)

PRIVATE EXCHANGES

(See also Exchanges of Land--if included in this Index.)

GENERALLY

Lands the title to which has been conveyed to the United States pursuant to a private exchange authorized by sec. 8 of the Taylor Grazing Act do not become available for oil and gas leasing upon acceptance of title on behalf of the United States, but only when an order is issued opening the lands to such disposition.

Esdra K. Hartley, 58 IBLA 329 (Oct. 16, 1981)

PUBLIC LANDS

(See also Accretion, Avulsion, Boundaries, Reliction, Surveys of Public Lands--if included in this Index.)

GENERALLY

Adverse possession cannot be asserted against the United States. Mere occupancy of public lands and the making of improvements thereon give no vested right against the United States. An occupant of Federal land must show that he occupies the same under some proceeding or law that at least authorized his right of possession.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

ADMINISTRATION

Where appellant disagrees with BLM's decision to designate an area for limited use by off-road vehicles and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

John Schandelmeier, 56 IBLA 284 (July 28, 1981)

PUBLIC LANDS--ContinuedADMINISTRATION--Continued

Where appellant disagrees with BLM's decision to designate an area as permanently closed for use by off-road vehicles and seeks to have its judgment substituted for that of the decisionmaker, the appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Magic Valley Trail Machine Ass'n, Inc., 57 IBLA 284 (Aug. 31, 1981)

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

LEASES AND PERMITS

Public domain land withdrawn or reserved is presumed to be available for oil and gas leasing unless the withdrawal or reservation specifically provides otherwise.

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

Esdras K. Hartley, 54 IBLA 38 (Apr. 9, 1981) 88 I.D. 437

PUBLIC LANDS--ContinuedSPECIAL USE PERMITS

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for commercial river rafting where the proposed use would exceed the river's carrying capacity and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

Whitewater Expeditions & Tours, 52 IBLA 80 (Jan. 9, 1981)

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for an organized off-road motorcycle race where the proposed use would adversely affect critical deer winter range and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

Cascade Motorcycle Club, 56 IBLA 134 (July 20, 1981)

PUBLIC RECORDS

(See also Administrative Procedure, Confidential Information--if included in this Index.)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

Jan Christian Sykes, 55 IBLA 23 (May 26, 1981)

Terry Burl Fryrear, 58 IBLA 94 (Sept. 24, 1981)

Marvin Coy Gifford et al., 58 IBLA 98 (Sept. 24, 1981)

Lula Lorene McCracken Slowey, 58 IBLA 202 (Sept. 29, 1981)

Betsy Romaine Beville, 58 IBLA 260 (Oct. 6, 1981)

William Milton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarman, 59 IBLA 182 (Oct. 27, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

Gladys Lee Cardwell Gifford, Betty Ann Gifford Jarman, 55 IBLA 332 (June 26, 1981)

Where the Bureau of Land Management file pertaining to a particular mining claim group contains information showing the claims to be null and void, the assignee who has failed to check the file runs the risks which flow from failure to so check that public record.

Gary Willis, 56 IBLA 217 (July 22, 1981)

PUBLIC SALES

APPLICATIONS

Bureau of Land Management properly rejects an application for the sale of public land pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1976), where the applicant refuses to pay related damages for unauthorized use of the land. Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

Reed Z. Asay, 55 IBLA 157 (June 9, 1981)

PREFERENCE RIGHTS

The exercise of a right of first refusal pursuant to sec. 214 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1722 (1976), by one having a preference right to purchase public land in accordance with sec. 2 of the Unintentional Trespass Act of 1968, 43 U.S.C. § 1432 (1976), is properly rejected when the preference right holder fails to submit satisfactory evidence of the ownership of contiguous lands within the time specified by the authorized officer as provided by regulation.

Lorraine Lauler (Trust), 52 IBLA 227 (Jan. 30, 1981)

RAILROAD GRANT LANDS

Pursuant to 43 CFR 2631.1, the Bureau of Land Management may properly require an applicant for patent under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), to provide specific proofs of conveyances and transfers of title.

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976).

Southern Pacific Transportation Co., B. K. Herndon, 54 IBLA 174 (Apr. 21, 1981)

RECLAMATION LANDS

(See also Irrigation Claims, Rights-of-Way--if included in this Index.)

GENERALLY

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of the withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert A. Adams, 57 IBLA 370 (Sept. 8, 1981)

A land owner is properly assessed annual operation and maintenance charges with respect to his lands within the boundaries of the Yuma Valley Reclamation Project.

David J. Stoddard, 4 OHA 204 (Oct. 26, 1981)

RECREATION AND PUBLIC PURPOSES ACT

An Indian allotment application is properly rejected where it requests lands which are not available for entry because they have previously been noted on ELM plats under a recreational and public purposes classification pursuant to 43 U.S.C. § 869 (1976).

Marjorie M. Underwood, 58 IBLA 21 (Sept. 16, 1981)

Where the Bureau of Land Management has transferred lands to the National Park Service for inclusion in a national recreation area, the lands are not subject to disposition under the Recreation and Public Purposes Act.

General H. F. W. Corp., 59 IBLA 320 (Nov. 4, 1981)

REGULATIONS

(See also Administrative Procedure--if included in this Index.)

GENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Melart, Inc., 52 IBLA 5 (Jan. 5, 1981)

Dale E. Henkins, 52 IBLA 9 (Jan. 5, 1981)

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

Joe Eastone, 52 IBLA 288 (Feb. 9, 1981)

Lowell L. Patten, 52 IBLA 299 (Feb. 10, 1981)

Coronado Oil Co., 52 IBLA 308 (Feb. 10, 1981)

L. L. Falter, John E. Weeks, 52 IBLA 313 (Feb. 10, 1981)

James C. Prehelich, 53 IBLA 34 (Feb. 26, 1981)

W. Keith Howard, 53 IBLA 92 (Mar. 2, 1981) 88 I.D. 341

St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981)

Clyde W. Luke, Betty J. Luke, 53 IBLA 136 (Mar. 9, 1981)

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

John Plutt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Joseph Cjurovich, 54 IBLA 100 (Apr. 15, 1981)

Bill C. Ross, 54 IBLA 116 (Apr. 16, 1981)

Charles W. McGowan III, 54 IBLA 119 (Apr. 16, 1981)

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

Dell Warren, 54 IBLA 159 (Apr. 21, 1981)

William I. Schindler, 54 IBLA 221 (Apr. 23, 1981)

Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

William M. Hand, 54 IBLA 303 (Apr. 29, 1981)

Sidney Hodges, John Golden, 55 IBLA 17 (May 26, 1981)

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REGULATIONS--Continued

GENERALLY--Continued

Earl Kremiller, 55 IBLA 28 (May 27, 1981)
Joe Benham, 55 IBLA 45 (May 29, 1981)
Betty L. Henry, 55 IBLA 47 (May 29, 1981)
Vincent M. D'Amico, Wolt C. Stempel, 55 IBLA 116 (June 3, 1981)
Mart I. Gilmore, 55 IBLA 128 (June 3, 1981)
Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)
Alberta K. Romero, 55 IBLA 140 (June 4, 1981)
Joseph Ojurovich, 55 IBLA 182 (June 15, 1981)
W. LeGrande Law, 55 IBLA 193 (June 16, 1981)
Thomas Williams, 56 IBLA 55 (July 10, 1981)
Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)
Walter D. Cosdon, 56 IBLA 112 (July 16, 1981)
Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (July 20, 1981)
Rolland Marshall, 56 IBLA 187 (July 20, 1981)
Allen Turner, 56 IBLA 280 (July 28, 1981)
Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)
Fred W. Croxen III, 56 IBLA 318 (July 29, 1981)
Caroline E. Brown, 56 IBLA 334 (July 30, 1981)
Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)
Estate of Mary B. Ritchie, 56 IBLA 361 (Aug. 3, 1981)
Edith Gion, 56 IBLA 375 (Aug. 3, 1981)
Lela J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)
Norman L. Moon, 57 IBLA 1 (Aug. 5, 1981)
Dave R. Newman, 57 IBLA 23 (Aug. 6, 1981)
Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)
L. Grace Wadsworth, 57 IBLA 242 (Aug. 27, 1981)
Intermountain Exploration Co., 57 IBLA 271 (Aug. 31, 1981)
Intermountain Exploration Co., 57 IBLA 274 (Aug. 31, 1981)
Del Rupp, 57 IBLA 297 (Aug. 31, 1981)
L. M. Pern, 57 IBLA 339 (Sept. 1, 1981)
Virgie Dowler, 57 IBLA 389 (Sept. 10, 1981)
Steven V. Miskoff, 58 IBLA 32 (Sept. 16, 1981)
James N. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)
Donald Jardine, 58 IBLA 49 (Sept. 21, 1981)
Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)
Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)
Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)
Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)

REGULATIONS--Continued

GENERALLY--Continued

Tom Applegarth, 58 IBLA 224 (Sept. 30, 1981)
Heirs of Raymond L. Carson et al., 58 IBLA 265 (Oct. 7, 1981)
Richard W. Thom, 58 IBLA 291 (Oct. 13, 1981)
Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)
Lee R. Newsom, 58 IBLA 325 (Oct. 16, 1981)
Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)
Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)
Ben M. Powell III, 59 IBLA 146 (Oct. 26, 1981)
Bruce A. DePosier, 59 IBLA 283 (Oct. 30, 1981)
John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)
Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)
Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)
Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)
Dr. Jose Trajal, 60 IBLA 97 (Nov. 19, 1981)
Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)
James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)
Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (Nov. 27, 1981)
Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)
Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a duly promulgated regulation of this Department. Where, however, the regulation was not properly promulgated, is lacking in statutory basis, and has been consistently ignored in actual practice, that regulation will be accorded no force or effect.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981)
 88 I.C. 24

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

Overthrust Oil and Gas Corp., 52 IBLA 119 (Jan. 13, 1981)
 88 I.C. 38

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

William H. Bevis, 52 IBLA 125 (Jan. 13, 1981)
Henri Guzek, 52 IBLA 200 (Jan. 26, 1981)
Kenneth G. Walker, 52 IBLA 214 (Jan. 30, 1981)
Lloyd M. Buttgerreit, 52 IBLA 363 (Feb. 19, 1981)
Robert G. Synder, Jeanne E. R. Synder, 52 IBLA 375 (Feb. 19, 1981)
James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)
Clayton V. Curtis, 54 IBLA 184 (Apr. 22, 1981)

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REGULATIONS--Continued

GENERALLY--Continued

D. L. Nielsen, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Philip I. Griner, 52 IBLA 179 (Jan. 26, 1981)

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

The regulations controlling transfer of oil and gas interests were amended on June 16, 1980, and the amended regulations govern where the interest holder has not sought approval of a transfer of his interest prior to this date. Under these amended regulations, BLM cannot consider any application for approval of a transfer of a lease interest until after the lease is issued.

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to meet the \$10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

Regulations should be so clear that there is no basis for an oil and gas lease offeror's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease.

Walter R. Wilson, Jr., 55 IBLA 96 (June 1, 1981)

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the Federal Register or set forth in the Departmental Manual.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto.

D. E. Bailey, 57 IBLA 120 (Aug. 25, 1981)

Mrs. Walter E. Bolles, 58 IBLA 257 (Oct. 6, 1981)

Eugene M. Goatcher, 58 IBLA 337 (Oct. 19, 1981)

REGULATIONS--Continued

GENERALLY--Continued

Persons dealing with the Government are presumed to have knowledge of pertinent rules and regulations, regardless of their actual knowledge of what is contained in such regulations.

Jeff Co., 61 IBLA 74 (Dec. 31, 1981)

APPLICABILITY

An ambiguous regulation relating to "the proper office" in which to file a relinquishment of a coal lease should not be interpreted to the detriment of a coal lessee who sought to comply with its provisions.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981) 88 I.D. 24

A final Departmental appellate decision construing a regulation will be applied with prospective effect only where it materially alters the interpretation given the regulation by earlier administrative decisions and where it would be unfair or prejudicial to apply such decision retroactively.

Killian L. Huger, Jr., 52 IBLA 174 (Jan. 26, 1981)

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1971, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations, amended in 1976 and 1979, with retroactive effect.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

Where regulations allowed the grantee of a highway right-of-way granted pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of that regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Where regulations allowed the grantee of a highway right-of-way pursuant to sec. 17 of the Federal Aid Highway Act of 1921, 23 U.S.C. § 317 (1976), to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of the regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Penasco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all non-competitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Thomas Connell, 56 IBLA 23 (June 30, 1981)

REGULATIONS--Continued

APPLICABILITY--Continued

Where an oil and gas lease offer, unaccompanied by statements as required by D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), was filed prior to Nov. 9, 1978, the Pack holding will not retroactively be applied to the offer.

Cleo Chapekis, 57 IBLA 398 (Sept. 14, 1981)

Patricia Ann DeSalvo, 58 IBLA 1 (Sept. 15, 1981)

Generally, new procedural regulations may be promulgated with retroactive effect and applied to a holder of preexisting interests. However, the present revised regulations in 43 CFR Part 2800 were not written with such effect. Therefore, where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

FORCE AND EFFECT AS LAW

Guidelines issued under BLM Manual sec. 1791 relating to preparation of an environmental analysis record with regard to a proposed timber sale are not the type of material required by 5 U.S.C. § 552(a)(1)(D) to be published in the Federal Register and as such are not binding on BLM.

Lane County Audubon Society, 55 IBLA 171 (June 11, 1981)

While the Bureau of Land Management may suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1745 (1976), where no implementing regulations have been issued and where there is no contrary policy directive, an application may be properly rejected where the statutory criteria have not been met.

Edward C. Miller, 56 IBLA 388 (Aug. 3, 1981)

INTERPRETATION

An ambiguous regulation relating to "the proper office" in which to file a relinquishment of a coal lease should not be interpreted to the detriment of a coal lessee who sought to comply with its provisions.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981)
88 I.D. 24

Where a regulation allows land description by legal subdivision, section, township and range, by metes and bounds, and by "tract acquisition numbers," but is insufficiently clear to allow a determination as to when one, rather than another of these methods of description should be used, an oil and gas lease offeror who has described the lands sought by tract acquisition numbers will not be held to have lost his statutory preference right for failure to comply with

REGULATIONS--Continued

INTERPRETATION--Continued

the regulation if the description afforded is accurate for the purpose.

Regulations should be so clear that there is no basis for an oil and gas lease offeror's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease.

Walter R. Wilson, Jr., 55 IBLA 96 (June 1, 1981)

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

Charles J. Rydzewski, 55 IBLA 373 (June 29, 1981)
88 I.D. 625

George W. Metz, 56 IBLA 97 (July 15, 1981)

Robert L. Andersen et al., 56 IBLA 182 (July 20, 1981)

"Right-of-way grant" is defined in the regulations, 43 CFR 2800.0-5(h), as an instrument issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1976). By implementing regulation, 43 CFR 2803.4, the Secretary has limited the applicability of sec. 506 of FLPMA, 43 U.S.C. § 1766 (1976), to "right-of-way grants."

James W. Smith (On Reconsideration), 55 IBLA 390 (June 30, 1981)

Regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them.

W. W. Priest, Michael Manduca, 55 IBLA 398 (June 30, 1981)

A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

John L. Messinger, Norris C. Delamore, Jr., 56 IBLA 1 (June 30, 1981)

Departmental regulations at 43 CFR 2653.5, insofar as they prescribe a specified course of action including publication, referral, investigation, conferring, reporting, etc., by the Department with regard to selections of public lands made pursuant to § 14(h)(1) of the Alaska Native Claims Settlement Act, cannot apply when the selected lands are not public lands and the selection applications must be rejected at the outset.

Doyon, Ltd., 6 ANCAE 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAE 129 (Oct. 22, 1981)

REGULATIONS--Continued

VALIDITY

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a duly promulgated regulation of this Department. Where, however, the regulation was not properly promulgated, is lacking in statutory basis, and has been consistently ignored in actual practice, that regulation will be accorded no force or effect.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981)
88 I.D. 24

WAIVER

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale must certify as to the acreage limitations and must submit a statement of citizenship or of corporate qualifications under 43 CFR 3120.1-4; failure to comply with the regulations does not require rejection of the bid. In competitive lease offers, where price rather than priority of filing is the primary criterion, certain deviations from mandatory requirements are curable defects.

Eurafrep, Inc., 55 IBLA 275 (June 25, 1981)

RENT

Where a communications site right-of-way has been issued for a television translator site to provide improved television reception to a remote area, the holder of the right-of-way does not qualify for a waiver of the fair market rental as providing a "valuable benefit to the public" without charge under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), and 43 CFR 2803.1-2.

New Mexico Broadcasting Co., 60 IBLA 163 (Nov. 24, 1981)

RES JUDICATA

Where a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

RIGHTS-OF-WAY

(See also Indian Lands, Reclamation Lands--if included in this Index.)

GENERALLY

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not show with some particularity adequate reason for appeal and support the allegations with evidence showing error.

Rocky Mountain Natural Gas Co., Inc., 55 IBLA 3 (May 26, 1981)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

Where regulations allowed the grantee of a highway right-of-way granted pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of that regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Where regulations allowed the grantee of a highway right-of-way pursuant to sec. 17 of the Federal Aid Highway Act of 1921, 23 U.S.C. § 317 (1976), to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of the regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Penasco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

An oil and gas lease offer for lands in a reservoir right-of-way from other than the owner of the right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

Under the "notation rule," where a reservoir right-of-way affecting certain land is noted on the official records of the Bureau of Land Management, that notation is effective to bar leasing of the oil and gas therein under the Mineral Leasing Act of 1920. This result follows even if the reservoir right-of-way should have been terminated.

RDM Interests, 57 IBLA 163 (Aug. 27, 1981)

An appraisal of a right-of-way for a natural gas pipeline, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), will be upheld on appeal if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. However, where the Bureau has determined the highest and best use of the land in order to evaluate the comparability of other lands, and an appellant raises sufficient doubt as to the accuracy of that determination, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Western Slope Gas Co., 61 IBLA 57 (Dec. 31, 1981)

ACT OF MARCH 4, 1911

Sec. 506 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1766 (1976), affords certain due process procedural protections to the holder of a right-of-way; however, sec. 506 is not applicable to the holder of a pre-FLPMA easement for a right-of-way granted under the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), who has not conformed the right-of-way to a FLPMA right-of-way pursuant to sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), because such an easement for a right-of-way was not granted, issued, or renewed pursuant to Title V of FLPMA.

James W. Smith (On Reconsideration), 55 IBLA 390 (June 30, 1981)

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911--Continued

A communications site right-of-way issued pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1976), which expires after the effective date, Oct. 21, 1976, of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), may not be renewed under the Act of Mar. 4, 1911, because that Act was repealed by FLPMA.

Donald R. Clark, 56 IBLA 167 (July 20, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone and Telegraph Co. (On Reconsideration), 59 IBLA 343 (Nov. 5, 1981)

Generally, new procedural regulations may be promulgated with retroactive effect and applied to a holder of preexisting interests. However, the present revised regulations in 43 CFR Part 2800 were not written with such effect. Therefore, where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 25, 1920

Where an applicant for a right-of-way filed under the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), for a natural gas pipeline, raises substantial questions concerning the rejection of its proposed route, a decision rejecting this route will be set aside and the matter referred for a hearing.

The Bureau of Land Management has authority to determine the route of a pipeline authorized under 30 U.S.C. § 185 (1976), and is required to consider all relevant factors including its impact on proposed WSA's, as well as the cost to the applicant, in selecting any specific route.

Fuel Resources Development Co., 59 IBLA 378 (Nov. 9, 1981)

An appraisal of a right-of-way for a natural gas pipeline, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), will be upheld on appeal if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. However, where the Bureau has determined the highest and best use of the land in order to evaluate the comparability of other lands, and an appellant raises sufficient doubt as to the accuracy of that determination, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Western Slope Gas Co., 61 IBLA 57 (Dec. 31, 1981)

APPLICATIONS

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Management overhead costs are not a reimbursable cost recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Utah Power and Light Co., 52 IBLA 105 (Jan. 12, 1981)

Southern California Edison Co., 55 IBLA 210 (June 18, 1981)

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest. Where, however, an applicant significantly controverts BLM's reasons for rejecting his application, the case will be remanded to allow BLM to respond to the issues raised on appeal and to reconsider the application in light thereof.

Patrick C. Frown, 55 IBLA 336 (June 26, 1981)

Where, over a 6-year period an applicant for a right-of-way fails to submit requested information or agree to reimburse BLM for costs incurred in processing the application, BLM has the authority to reject the application for a failure of diligence on the part of the applicant.

Wyoming Water, Inc., 56 IBLA 139 (July 20, 1981)

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

The Department of the Interior may condition approval of a right-of-way application for a communications site right-of-way by requiring acceptance of conditions for the protection of the public interest so long as such conditions are neither inconsistent with nor tend to unreasonably burden the proposed right-of-way.

Donald R. Clark, 56 IBLA 167 (July 20, 1981)

Where an applicant for a right-of-way filed under the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), for a natural gas pipeline, raises substantial questions concerning the rejection of its proposed route, a decision rejecting this route will be set aside and the matter referred for a hearing.

Fuel Resources Development Co., 59 IBLA 378 (Nov. 9, 1981)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(b)(1), states that the Secretary shall require an applicant for a right-of-way to submit certain information prior to the issuance of the right-of-way, and an application for such right-of-way is properly canceled where the applicant fails to comply with the requirements.

John W. Barbee et al., 60 IBLA 81 (Nov. 19, 1981)

CANCELLATION

Sec. 506 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1766 (1976), affords certain due process procedural protections to the holder of a right-of-way; however, sec. 506 is not applicable to the holder of a pre-FLPMA easement for a right-of-way granted under the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), who has not conformed the right-of-way to a FLPMA right-of-way pursuant to sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), because such an easement for a right-of-way was not granted, issued, or renewed pursuant to Title V of FLPMA.

James W. Smith (on Reconsideration), 55 IBLA 390 (June 30, 1981)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(b)(1), states that the Secretary shall require an applicant for a right-of-way to submit certain information prior to the issuance of the right-of-way, and an application for such right-of-way is properly canceled where the applicant fails to comply with the requirements.

John W. Barbee et al., 60 IBLA 81 (Nov. 19, 1981)

CONDITIONS AND LIMITATIONS

The Department of the Interior may condition approval of a right-of-way application for a communications site right-of-way by requiring acceptance of conditions for the protection of the public interest so long as such conditions are neither inconsistent with nor tend to unreasonably burden the proposed right-of-way.

Donald R. Clark, 56 IBLA 167 (July 20, 1981)

RIGHTS-OF-WAY--Continued

FEDERAL HIGHWAY ACT

Where regulations allowed the grantee of a highway right-of-way pursuant to sec. 17 of the Federal Aid Highway Act of 1921, 23 U.S.C. § 317 (1976), to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of the regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Penasco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Utah Power and Light Co., 52 IBLA 105 (Jan. 12, 1981)

Southern California Edison Co., 55 IBLA 210 (June 18, 1981)

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest. Where, however, an applicant significantly controverts BLM's reasons for rejecting his application, the case will be remanded to allow BLM to respond to the issues raised on appeal and to reconsider the application in light thereof.

Patricia O. Brown, 55 IBLA 336 (June 26, 1981)

Where, over a 6-year period an applicant for a right-of-way fails to submit requested information or agree to reimburse BLM for costs incurred in processing the application, BLM has the authority to reject the application for a failure of diligence on the part of the applicant.

Wyoming Water, Inc., 56 IBLA 139 (July 20, 1981)

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. However, where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

RIGHTS-OF-WAY--Continued

NATURE OF INTEREST GRANTED

A right-of-way granted by Revised Statutes Sec. 2477 is a less-than-fee interest in the nature of an easement. Following the acceptance of a Revised Statutes Sec. 2477 grant of right-of-way, the Federal Government retains its fee interest in the land, subject to the right-of-way, and may dispose of it pursuant to law.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAR 307 (June 26, 1981) 88 I.D. 629

Where regulations allowed the grantee of a highway right-of-way granted pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of that regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Where regulations allowed the grantee of a highway right-of-way pursuant to sec. 17 of the Federal Aid Highway Act of 1921, 23 U.S.C. § 317 (1976), to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of the regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Penasco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

REVISED STATUTES SEC. 2477

While the question of the establishment of a public highway under the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, is ultimately a matter for the state courts, BLM may properly decide the matter for its own purposes where such a question arises during the consideration of an application for a private access road right-of-way under sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976).

A Bureau of Land Management decision rejecting a right-of-way application for a private access road, filed pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), because the road in question is a public highway established pursuant to the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, will be vacated where the evidence in the record does not support the finding that the road is a public highway.

Nick Dire et al., 55 IBLA 151 (June 8, 1981)

A right-of-way granted by Revised Statutes Sec. 2477 is a less-than-fee interest in the nature of an easement. Following the acceptance of a Revised Statutes Sec. 2477 grant of right-of-way, the Federal Government retains its fee interest in the land, subject to the right-of-way, and may dispose of it pursuant to law.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAR 307 (June 26, 1981) 88 I.D. 629

RIGHTS-OF-WAY--Continued

REVISED STATUTES SEC. 2477--Continued

Where regulations allowed the grantee of a highway right-of-way granted pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of that regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Penasco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

RULES OF PRACTICE

(See also Administrative Procedure, Appeals, Contests & Protests, Contracts, Hearings, Indian Probate, Practice Before the Department--if included in this Index.)

GENERALLY

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Betty Alexander, 53 IBLA 139 (Mar. 9, 1981)

Where an appeal is taken from a requirement imposed by BLM and the appellant complies with the requirement during the pendency of the appeal, the case will be remanded for further consideration of the application, providing that such action will not prejudice the interests of the United States or any third party.

State of Alaska, 54 IBLA 373 (May 19, 1981)

Service of a BLM decision is accomplished when it is delivered to the addressee's last address of record by certified mail and such delivery is substantiated by postal authorities, regardless of whether it was in fact received by the person to whom it was addressed, and the prescribed period for initiating an appeal from such decision commences on the date of such delivery.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

RULES OF PRACTICE--Continued

GENERALLY--Continued

Where a party, in the course of various proceedings before the Department, asserts facts that would, if proven, entitle him or her to obtain patent to land owned by the United States, and the litigation proceeds on the assumption that the facts are as stated, appellant will not be heard in a subsequent hearing to deny that those facts existed.

United States v. Richard P. Maskins, 59 IBLA 1
(Oct. 21, 1981) 88 I.D. 925

Where a decision of a BLM state office requires a priority applicant for an oil and gas lease being issued through the simultaneous filing system to file supplemental information within a specified period of time, and the information is filed after this period has run, then delay in filing may not be waived pursuant to 43 CFR 1821.2-2(g), because the rights of applicants drawn with a subsidiary priority have intervened.

E. Peter Zoch, 60 IBLA 150 (Nov. 24, 1981)

APPEALS

Generally

Outlining the treatment to be accorded voluminous exhibits, the Board states that in the event counsel for either side considers that information contained in a voluminous exhibit either proves or may be of material assistance in proving a particular point, it is incumbent upon counsel to specifically cite the portions of the voluminous exhibit relied upon by page number, by date, or by other appropriate reference. Absent specific citations to a voluminous exhibit or to an appropriate summary thereof in evidence, the Board will not undertake to determine the content of this type of exhibit in particular areas before reaching its decision.

The Board seriously questions the wisdom of the Government in not arranging for the audit of multi-million dollar claims apparently advanced in good faith by reputable contractors, noting that securing audits will not only facilitate the examination of witnesses with respect to quantum but are also likely to prove to be useful in establishing a basis for agreeing upon stipulations narrowing the issues in quantum areas or affording a basis for arriving at a settlement prior to the hearing, while it is in progress or after it has been concluded.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Where, on appeal, a mining claimant submits arguments similar or identical to those presented before the Administrative Law Judge after the hearing had been concluded and the decision of the Administrative Law Judge correctly summarizes the facts and applies the applicable law, the decision of the Administrative Law Judge will be adopted by the Board.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

Where, after initial wilderness inventory, the Bureau of Land Management decides that an area might possess wilderness characteristics, an appellant who objects to such a determination must show that there is no realistic possibility that these lands may be suitable for wilderness designation.

Jerry D. Reynolds, 54 IBLA 300 (Apr. 29, 1981)

Adjudication of an appeal before the Board of Land Appeals is necessarily based on the information included in the case file. Where there is nothing in the case file to support BLM's basis for rejecting an oil and gas lease offer, BLM's decision rejecting the offer will be reversed.

Patricia B. Amoroso, 55 IBLA 190 (June 16, 1981)

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

An appeal may be decided on the basis of a theory not advanced by the parties so long as the theory is consistent with the facts of record or legitimate inferences therefrom.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80 (Aug. 12, 1981) 88 I.D. 722

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial decision in another case, made while the subject appeal

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedGenerally--Continued

was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167
(Aug. 27, 1981) 88 I.D. 772

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Superior Oil Co., 57 IBLA 404 (Sept. 14, 1981)

Neither the State of Alaska nor an instrumentality thereof has standing to appeal a decision which recognizes that full title to a parcel of land is in the State, absent a showing of injury in fact from such a decision.

State of Alaska, 58 IBLA 118 (Sept. 24, 1981)

A finding by BLM that some statutory mechanism has been triggered which automatically divests a right does not and cannot mean that the adversely affected party is denied recourse to the appellate process. The Board of Land Appeals is the exclusive arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Office of the Solicitor may create or deny the right of appeal to the Board.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981)
88 I.D. 879

Where the definition of "road," utilized in the Wilderness Inventory Handbook, cannot be said to be contrary to the statutory language or legislative intent manifested in sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), decisions employing such definition will not be set aside on appeal unless it can be shown that it was improperly applied.

California State Lands Commission, 58 IBLA 213
(Sept. 29, 1981)

Where a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedGenerally--Continued

Where, on appeal, an oil and gas lessee submits evidence disputing a decision of BLM that a portion of the land embraced by his lease is on a known geologic structure of a producing oil or gas field, and there is no basis in the record to support BLM's determination, the decision will be set aside and the case remanded for consideration by BLM of appellant's contentions.

Hepburn T. Armstrong, 60 IBLA 140 (Nov. 24, 1981)

Burden of Proof

In a case involving the assertion of a differing site conditions claim under a contract for the construction of concrete lined tunnels for the Navajo Indian Irrigation Project, the Board follows the Court of Claims in holding that it is not necessary for the "indications" in the contract to be explicit or specific, it being sufficient for there to be an indication on the face of the contract documents causing a bidder reasonably to expect that there were no "sub-surface or latent" physical conditions at the site differing materially from those indicated in the contract.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981)
88 I.D. 41

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

A mining claimant will not have satisfied his burden of proof with respect to marketability where the evidence indicates a superabundance of the mineral of commercial quality such that supply exceeds demand and the claimant fails to show that his mineral deposit possesses a unique advantage over other deposits from potentially competitive sources.

United States v. The Dredge Corp., 54 IBLA 281
(Apr. 28, 1981)

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

United States v. Alice W. Rouse et al., 56 IBLA 36
(July 8, 1981)

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claim is valid.

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedBurden of Proof--Continued

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

An appellant or intervenor requesting this Board to reverse a Bureau of Land Management decision regarding the inclusion or exclusion of a unit of land as a wilderness study area must show the decision to be based on a clear and specific error of law or fact, otherwise the Board will affirm.

Merrill G. Hastings, 60 IBLA 54 (Nov. 17, 1981)

Dismissal

Where Geological Survey issues an order directing appellant to pay back royalties attributable to an offshore oil and gas lease, and thereafter schedules a conference with appellant to discuss its order, a notice of appeal filed within 30 days of such conference will be regarded as timely.

Shell Oil Co., 52 IBLA 74 (Jan. 9, 1981)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

United States v. William A. Reavely et al., 53 IBLA 320 (Mar. 25, 1981)

An appeal from a Bureau of Land Management decision suspending action on an Indian allotment application pending final action on a previously filed application for the same lands will be dismissed and the case remanded to BLM where the record shows that the previously filed application requesting the same land was, in fact, filed prior to appellant's application.

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

A claim asserted under the Changes clause for increased costs resulting from actions of the President in decontrolling the price of heavy crude oil is dismissed as being outside the jurisdiction of the Board since the President's action was a sovereign act taken as part of the program to maintain or increase production of heavy crude oil.

Appeal of Martin K. Eby Construction Co., Inc., IBCA-1389-9-80 (Apr. 8, 1981) 88 I.D. 431

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedDismissal--Continued

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Geneva Barry et al., 54 IBLA 48 (Apr. 9, 1981)

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of service of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

Art Fields, Russel Adams, 57 IBLA 142 (Aug. 25, 1981)

Lynn Dable, 58 IBLA 73 (Sept. 22, 1981)

A Government motion to dismiss an appeal is granted where no express contract between the parties exists, there is no evidence from which an implied in fact contract could be inferred, and the Board is without jurisdiction over contracts implied in law, assuming appellant is seeking full relief.

Appeal of Dean Prosser and Crew, IBCA-1471-6-81 (Aug. 28, 1981) 88 I.D. 809

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Galen B. Brazington, 59 IBLA 255 (Oct. 29, 1981)

Neguoa Ass'n, 60 IBLA 386 (Dec. 23, 1981)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of that portion of a State Director's decision which implements an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department and the appeal will be dismissed insofar as it relates to this issue.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

Effect of

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedEffect of--Continued

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit the advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, notwithstanding the fact that at the time of the notice the Secretary had suspended the Bureau of Land Management's authority to issue noncompetitive oil and gas leases until further notice. However, if the first-drawn applicant files a notice of appeal within that time period, the time period is suspended and following affirmation of Bureau of Land Management's decision, the first-drawn applicant is properly given the entire time period from receipt of the Board's decision within which to submit the rental.

Robert A. Shryock, Jas. O. Breene, Jr., 55 IBLA 74 (June 1, 1981)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial Bureau of Land Management decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements.

Gary Willis, 56 IBLA 217 (July 22, 1981)

When an appeal to the Board of Land Appeals from a decision made by an official of the Bureau of Land Management is properly filed, that official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over the case is restored by Board action disposing of the appeal.

Sierra Club, 57 IBLA 288 (Aug. 31, 1981)

Failure to Appeal

The 30-day period within which an appeal from a decision classifying lands as being within a KGS must be initiated commences upon service on the lessee (or co-lessee) of record of a copy of the decision. Both the lessee and his agent, including the holder of operating rights under the lease, are subject to the 30-day deadline.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

Hearings

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

The Board refuses to draw inferences adverse to the Government by reason of its failure to have its project engineer testify in important areas and by reason of its failure to call as witnesses two of its employees who attended the hearing where the Board finds that the action of the Government is consistent with the principal defenses made to the differing site conditions claims asserted and where under long-established Board practice, the appellant could have

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedHearings--Continued

called any or all of the Government's employees concerned as witnesses without making them appellant's witnesses for the purposes of impeachment.

The Board sustains the action of the hearing member in refusing to receive in evidence documents not identified by a witness through whose testimony their admission is being sought.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

A Government motion for summary judgment is granted and an appellant's request for a hearing is denied in a case where if all of appellant's factual allegations are accepted as true, there would still be no basis for granting the appellant relief for the claim asserted. The Board finds that to hold a hearing in such circumstances would not secure the just and inexpensive determination of the appeal without unnecessary delay.

Appeal of McCutcheon-Peterson (JV), IBCA-1392-9-80 (Mar. 12, 1981) 88 I.D. 361

The Board of Land Appeals has the discretion to grant a request for a hearing on issues of fact but, in order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

A second hearing will not be afforded where a mining claimant has been given notice and an opportunity to appear at a hearing and where nothing has been submitted to indicate that another hearing would produce a different result.

United States v. Michael Kurelich et al., 54 IBLA 124 (Apr. 17, 1981)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Motions

A Government motion for summary judgment is granted and an appellant's request for a hearing is denied in a case where if all of appellant's factual allegations are accepted as true, there would still be no basis for granting the appellant relief for the claim asserted. The Board finds that to hold a hearing in such circumstances would not secure the just and inexpensive determination of the appeal without unnecessary delay.

Appeal of McCutcheon-Peterson (JV), IBCA-1392-9-80 (Mar. 12, 1981) 88 I.D. 361

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedMotions--Continued

A claim asserted under the Changes clause for increased costs resulting from actions of the President in decontrolling the price of heavy crude oil is dismissed as being outside the jurisdiction of the Board since the President's action was a sovereign act taken as part of the program to maintain or increase production of heavy crude oil.

Appeal of Martin K. Eby Construction Co., Inc.,
IBCA-1389-9-80 (Apr. 8, 1981) 88 I.D. 431

A Government motion to dismiss an appeal is granted where no express contract between the parties exists, there is no evidence from which an implied in fact contract could be inferred, and the Board is without jurisdiction over contracts implied in law, assuming appellant is seeking full relief.

Appeal of Dean Prosser and Crew, IBCA-1471-6-81
(Aug. 28, 1981) 88 I.D. 809

The Government's motion for reconsideration which requests remand of an appeal, after a decision by the Board that appellant's final report was improperly rejected using criteria not specified or reasonably inferred by the contract, in order that the contracting officer can render a new decision on acceptability of the final report under the terms of the contract is denied because no proper basis is offered for the request.

Appeal of A. Helene Warren, IBCA-1422-1-81 (Nov. 9, 1981)

Notice of Appeal

Where a person moves from his record address and does not apprise BLM of a forwarding address, and a copy of a BLM decision affecting him is mailed to this last address of record and returned by the postal service as undeliverable, the decision is considered to have been "served" on him as of the date it is returned to BLM. 43 CFR 4.401(c). Accordingly, the deadline for filing a notice of appeal is 30 days after the date the decision is returned to BLM, and an appeal filed after that date is properly dismissed as untimely.

Reg. Whitson, 55 IBLA 5 (May 26, 1981)

Reconsideration

Upon a motion for reconsideration, the Board finds that the contentions of appellant challenging the principal decision are based on misstatements or misinterpretations of the principal decision or ask that the Board consider the merits of a claim deemed to have been properly dismissed for lack of proof of coercion or duress.

Appeal of Systems Technology Associates, Inc.,
IBCA-1108-4-76 (Apr. 30, 1981) 88 I.D. 521

The Government's motion for reconsideration which requests remand of an appeal, after a decision by the Board that appellant's final report was improperly rejected using criteria not specified or reasonably inferred by the contract, in order that the contracting officer can render a new decision on acceptability of the final report under the terms of the contract is

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedReconsideration--Continued

denied because no proper basis is offered for the request.

Appeal of A. Helene Warren, IBCA-1422-1-81 (Nov. 9, 1981)

Standing to Appeal

A Government motion to dismiss an appeal is granted where no express contract between the parties exists, there is no evidence from which an implied in fact contract could be inferred, and the Board is without jurisdiction over contracts implied in law, assuming appellant is seeking full relief.

Appeal of Dean Prosser and Crew, IBCA-1471-6-81
(Aug. 28, 1981) 88 I.D. 809

Neither the State of Alaska nor an instrumentality thereof has standing to appeal a decision which recognizes that full title to a parcel of land is in the State, absent a showing of injury in fact from such a decision.

State of Alaska, 58 IBLA 118 (Sept. 24, 1981)

Under 43 CFR 4.410, a party must be adversely affected by a decision of an officer of the Bureau of Land Management in order to have the right to appeal to the Board of Land Appeals.

California State Lands Commission, 58 IBLA 213
(Sept. 29, 1981)

Appellant business lessee of tribal trust lands held not to be an interested party affected by a final administrative action of an official of the Bureau of Indian Affairs within the meaning of Interior Board of Indian Appeals practice rule sec. 4.331 (46 FR 7337 (Jan. 23, 1981)) so as to be entitled to seek review of agency determination that lessor Indian tribe had failed to legally enact a tribal law and order code.

Marlin D. Kurkendall v. Comm'r of Indian Affairs and Yavapai-Prescott Tribe, 9 IBIA 90 (Oct. 23, 1981)

Statement of Reasons

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

United States v. William A. Reavely et al., 53 IBLA 320 (Mar. 25, 1981)

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

and gas in the tract, the case may be remanded for consideration of the new evidence.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

Where the Bureau of Land Management fails to designate an inventory unit as a Wilderness Study Area (WSA) because, *inter alia*, it lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation, and thereafter a protest and appeal are filed which contain no affirmative allegations of facts or provide no legal arguments sufficient to compel a reversal, BLM's decision will be affirmed.

Sierra Club, 53 IBLA 159 (Mar. 12, 1981)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Geneva Barry et al., 54 IBLA 48 (Apr. 9, 1981)

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not show with some particularity adequate reason for appeal and support the allegations with evidence showing error.

Rocky Mountain Natural Gas Co., Inc., 55 IBLA 3 (May 26, 1981)

Timely Filing

Where Geological Survey issues an order directing appellant to pay back royalties attributable to an offshore oil and gas lease, and thereafter schedules a conference with appellant to discuss its order, a notice of appeal filed within 30 days of such conference will be regarded as timely.

Shell Oil Co., 52 IBLA 74 (Jan. 9, 1981)

Where a person moves from his record address and does not apprise BLM of a forwarding address, and a copy of a BLM decision affecting him is mailed to this last address of record and returned by the postal service as undeliverable, the decision is considered to have been "served" on him as of the date it is returned to BLM. 43 CFR 4.401(c). Accordingly, the deadline for filing a notice of appeal is 30 days after the date the decision is returned to BLM, and an appeal filed after that date is properly dismissed as untimely.

Reg. Whitson, 55 IBLA 5 (May 26, 1981)

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of service of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

Art Fields, Russel Adams, 57 IBLA 142 (Aug. 25, 1981)

Lynn Dahle, 58 IBLA 73 (Sept. 22, 1981)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Galen B. Brazington, 59 IBLA 255 (Oct. 29, 1981)

Nequicia Ass'n, 60 IBLA 386 (Dec. 23, 1981)

The 30-day period within which an appeal from a decision classifying lands as being within a KGS must be initiated commences upon service on the lessee (or co-lessee) of record of a copy of the decision. Both the lessee and his agent, including the holder of operating rights under the lease, are subject to the 30-day deadline.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

EVIDENCE

The Board refuses to draw inferences adverse to the Government by reason of its failure to have its project engineer testify in important areas and by reason of its failure to call as witnesses two of its employees who attended the hearing where the Board finds that the action of the Government is consistent with the principal defenses made to the differing site conditions claims asserted and where under long-established Board practice, the appellant could have called any or all of the Government's employees concerned as witnesses without making them appellant's witnesses for the purposes of impeachment.

In a case involving the assertion of a differing site conditions claim under a contract for the construction of concrete lined tunnels for the Navajo Indian Irrigation Project, the Board follows the Court of Claims in holding that it is not necessary for the "indications" in the contract to be explicit or specific, it being sufficient for there to be an indication on the face of the contract documents causing a bidder reasonably to expect that there were no "subsurface or latent" physical conditions at the site differing materially from those indicated in the contract.

Outlining the treatment to be accorded voluminous exhibits, the Board states that in the event counsel for either side considers that information contained in a voluminous exhibit either proves or may be of material assistance in proving a particular point, it is incumbent upon counsel to specifically cite the portions of the voluminous exhibit relied upon by page number, by date, or by other appropriate reference. Absent specific citations to a voluminous exhibit or to an appropriate summary thereof in evidence, the Board will not undertake to determine the content of this type of exhibit in particular areas before reaching its decision.

The Board sustains the action of the hearing member in refusing to receive in evidence documents not identified by a witness through whose testimony their admission is being sought.

The Board seriously questions the wisdom of the Government in not arranging for the audit of multi-million dollar claims apparently advanced in good faith by reputable contractors, noting that securing audits will not only facilitate the examination of witnesses with respect to quantum but are also likely to prove to be useful in establishing a basis for agreeing upon stipulations narrowing the issues in quantum areas or

RULES OF PRACTICE--Continued

EVIDENCE--Continued

affording a basis for arriving at a settlement prior to the hearing, while it is in progress or after it has been concluded.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the ELM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

Assay reports have limited probative value concerning the existence of a valuable mineral deposit on a mining claim when they are not supported by sufficient evidence to show how and where the samples were taken and how the samples were treated.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish equitable justification for reopening the hearing.

United States v. Armin Speckert, 55 IBLA 340 (June 26, 1981)

To warrant a further hearing in a mining claim contest based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to warrant a further hearing.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

GOVERNMENT CONTESTS

Where a Government contest complaint, when filed and received by mineral claimants, correctly identifies all claimants as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to so move will not vitiate the effectiveness of an adjudication of the validity of a mining claim.

In order to sustain a charge that land embraced within a mining claim is not held in good faith for

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

mining purposes the evidence relating to the mineral claimant's lack of good faith must be clear.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

A sufficient prima facie case by the Government does not require positive proof that there has been no discovery made or that the mining claim is nonmineral in character. Upon the Government's presentation of a prima facie case, the burden shifts to the claimant to prove by a preponderance of the evidence that he indeed has effected a discovery of a valuable mineral deposit within the limits of the claim.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

The provisions of 25 U.S.C. § 194 (1976) relating to the placing of the burden of proof do not apply where the Government contests the qualifications of an allotment applicant. An allotment applicant in such a situation is the proponent of the rule and must show his or her entitlement to the land sought.

United States v. Donald E. Flynn and Heirs of Henry Orock (Deceased), 53 IBLA 208 (Mar. 18, 1981)

88 I.D. 373

In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law or by rule, order, or regulation. 43 CFR 4.22(b).

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record completed at the hearing, despite the absence of evidence in support of the party's case.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Absent a patent application, in a mining contest hearing where the Government's evidence of lack of discovery relates only to insufficient quality and quantity of mineralization and the mining claimant produces evidence sufficient to preponderate on those issues, the contest complaint is properly dismissed.

United States v. Malin W. Lewis, 58 IBLA 282 (Oct. 8, 1981)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

HEARINGS

The Board seriously questions the wisdom of the Government in not arranging for the audit of multi-million dollar claims apparently advanced in good faith by reputable contractors, noting that securing audits will not only facilitate the examination of witnesses with respect to quantum but are also likely to prove to be useful in establishing a basis for agreeing upon stipulations narrowing the issues in quantum areas or affording a basis for arriving at a settlement prior to the hearing, while it is in progress or after it has been concluded.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

Where a Government contest complaint, when filed and received by mineral claimants, correctly identifies all claimants as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to so move will not vitiate the effectiveness of an adjudication of the validity of a mining claim.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Notice and an opportunity for a hearing is required only where there is a disputed question of fact and where validity of a millsite location turns on the legal effect to be given facts of record concerning the

RULES OF PRACTICE--Continued

HEARINGS--Continued

status of the land when the millsite was located, no hearing is required.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

A coal prospecting permittee who applies for a coal lease is entitled to a hearing before an Administrative Law Judge before his application is rejected, where the permittee alleges that the application contains data that commercial quantities of coal exist on the lands; however, where the permittee alleges that there is coal in commercial quantities in certain lands as measured by the mining industry standard BLM and Survey should have the opportunity to consider whether commercial quantities as measured by the mining industry is sufficient to comply with commercial quantities as defined in 43 CFR 3430.1-2.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Roselyn Isaac (On Reconsideration), 53 IBLA 306 (Mar. 25, 1981)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

Where the Bureau of Land Management has retained custody of wild free-roaming horses, adopted pursuant to the Act of Dec. 15, 1971, as amended, 16 U.S.C.A. § 1331 (West Supp. 1980), on the basis that the horses have been commercially exploited and the case presents substantial issues of fact, the assignees under the original cooperative agreements are entitled to a hearing before an Administrative Law Judge.

Geneva Barry et al., 54 IBLA 48 (Apr. 9, 1981)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and

RULES OF PRACTICE--Continued

HEARINGS--Continued

opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of witnesses may be submitted.

The Court of Appeals for the Ninth Circuit has held that application of the Departmental contest procedures to provide the allotment applicant with notice and an opportunity for a hearing prior to adverse action on the allotment application complies, at least facially, with the due process requirements set forth in the court's mandate in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

State of Alaska (Leland R. Estabrook), 54 IBLA 346 (May 12, 1981)

Where a Native allotment application filed in 1961 is rejected, more than 13 years after applicant has submitted acceptable evidence of his use and occupancy of the land for more than the required 5-year period set out in the appropriate statute, solely on the basis of a Geological Survey report in 1974 that the land was believed to be prospectively valuable for phosphate, the decision rejecting the application will be set aside and the matter remanded to BLM to proceed to issuance of patent as land must be considered to be nonmineral in character absent a showing that minerals are present in such quantities and such qualities as would induce a person of ordinary prudence to expend time and money with a reasonable prospect of success in developing a paying mine thereon.

Heirs of Simon Paneak, 55 IBLA 305 (June 25, 1981)

A coal prospecting permittee who applies for a coal lease, alleging with supportive data that there is coal in commercial quantities within certain lands in its permit, is entitled to a hearing conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before its application may be finally rejected because it has not shown coal in commercial quantities.

Hiko Bell Mining and Oil Co., 55 IBLA 324 (June 26, 1981)

RULES OF PRACTICE--Continued

HEARINGS--Continued

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish equitable justification for reopening the hearing.

United States v. Armin Speckert, 55 IBLA 340 (June 26, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was withdrawn for lighthouse purposes, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Stanislaus Mike, 56 IBLA 69 (July 10, 1981)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial Bureau of Land Management decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements.

Gary Willis, 56 IBLA 217 (July 22, 1981)

Mining claims located on land previously withdrawn from mineral entry are null and void ab initio. However, where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment to a previous location or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. M. Polk, Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981)

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record completed at the hearing, despite the absence of evidence in support of the party's case.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Fahy Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

RULES OF PRACTICE--ContinuedHEARINGS--Continued

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

To warrant a further hearing in a mining claim contest based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to warrant a further hearing.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone and Telegraph Co. (On Reconsideration), 59 IBLA 343 (Nov. 5, 1981)

The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

Ilean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

The Department of the Interior will not grant a hearing to examine a determination by the Forest Service that land is not chiefly valuable for agricultural or grazing uses where such determination is entrusted by statute to the Secretary of Agriculture.

Jimmie A. George, Sr., 60 IBLA 14 (Nov. 16, 1981)

PROTESTS

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Phillip A. Kulin, 53 IBLA 57 (Feb. 27, 1981)

WITNESSES

The Board refuses to draw inferences adverse to the Government by reason of its failure to have its project engineer testify in important areas and by reason of its failure to call as witnesses two of its employees who attended the hearing where the Board finds that the action of the Government is consistent with the principal defenses made to the differing site conditions claims asserted and where under long-established Board practice, the appellant could have called any or all of the Government's employees concerned as witnesses without making them appellant's witnesses for the purposes of impeachment.

RULES OF PRACTICE--ContinuedWITNESSES--Continued

The Board sustains the action of the hearing member in refusing to receive in evidence documents not identified by a witness through whose testimony their admission is being sought.

The Board seriously questions the wisdom of the Government in not arranging for the audit of multi-million dollar claims apparently advanced in good faith by reputable contractors, noting that securing audits will not only facilitate the examination of witnesses with respect to quantum but are also likely to prove to be useful in establishing a basis for agreeing upon stipulations narrowing the issues in quantum areas or affording a basis for arriving at a settlement prior to the hearing, while it is in progress or after it has been concluded.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

SECRETARY OF THE INTERIOR

(See also Administrative Authority--if included in this Index.)

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

John R. Anderson, 57 IBLA 149 (Aug. 25, 1981)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Superior Oil Co., 57 IBLA 404 (Sept. 14, 1981)

The Secretary of the Interior may require an oil and gas lease applicant to accept a stipulation reasonably designed to protect a duly established subsurface oil and gas storage area as a condition precedent to the issuance of a lease.

M. Robert Paglee, 59 IBLA 192 (Oct. 27, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in

SECRETARY OF THE INTERIOR--Continued

the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of that portion of a State Director's decision which implements an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department and the appeal will be dismissed insofar as it relates to this issue.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

SEGREGATION

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

Jan Christian Sykes, 55 IBLA 23 (May 26, 1981)

Terry Burl Fryrear, 58 IBLA 94 (Sept. 24, 1981)

Marvin Coy Gifford et al., 58 IBLA 98 (Sept. 24, 1981)

Lula Lorene McCracken Slowey, 58 IBLA 202 (Sept. 29, 1981)

Betsy Romaine Beville, 58 IBLA 260 (Oct. 6, 1981)

William Milton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarnan, 59 IBLA 182 (Oct. 27, 1981)

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

A state exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands

SEGREGATION--Continued

from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates the lands from all subsequent appropriation, including location under the mining laws; however, the application to select has no segregative effect when at the time the application is filed, the land is withdrawn from all forms of appropriation under the public land laws, including selections by a state.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

Gladys Lee Cardwell Gifford, Betty Ann Gifford Jarnan, 55 IBLA 332 (June 26, 1981)

"Notation rule." Under the notation rule a mill-site claim, located at a time when the master title plat in the local Bureau of Land Management office shows that the lands embraced by the claim are included in a state selection application, is properly declared null and void ab initio because notation of the state selection application on the official records segregates the land from further appropriation. The rule applies even where the notation was posted in error, or where the segregative use so noted is void, voidable, or has terminated.

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands, where the filing is regular on its face, segregates the lands from all subsequent appropriation, including location and entry under the mining laws and a millsite located while the land is so segregated is null and void ab initio.

A mining claim or millsite located on land at a time when the land is segregated from the operation of the mining laws by a State selection application is properly declared null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

SMALL TRACT ACTAPPRAISALS

Where a lessee of a small tract lease contends the rental set by the Bureau of Land Management is too high, the burden is upon her to prove by positive and substantial evidence that the appraisal is in error.

Lucille S. Hoerning, 57 IBLA 74 (Aug. 20, 1981)

SODIUM LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

ROYALTIES

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed under sodium leases must be imposed on the "gross value of the sodium compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market even when applied to an intermediate product and without deduction for the cost that would be incurred in producing a refined product.

Sales commissions are not an allowable deduction in the computation of royalty under sodium leases.

FMC Corp., 54 IBLA 77 (Apr. 14, 1981)

Sales commissions are not an allowable deduction in the computation of royalty under sodium leases.

To the extent that a commission is granted to distributors or jobbers who purchase soda ash for resale, such a discount represents an allowable deduction from the royalty base; however, where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product and reimburses the second company on the basis of the "net sales proceeds" received by the first company minus a retained commission, the first company cannot be considered a distributor for resale so as to allow the retained commission to be deducted from the royalty base. In such a situation the retained commission is properly characterized as a sales commission and not deductible.

In computing royalty under sodium leases where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product, if the first company buys the soda ash for consumption at its own plants, it cannot use an unpublished preferential sales price in determining the amount owed the second company. The second company is properly required to pay royalties on the basis of the published delivered prices paid by the first company's customers less the customary rail freight equalization allowances.

In computing royalty under sodium leases where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product, exchange agreement billings by the first company, which amount to discounts, understate the gross value of the soda ash for royalty purposes.

Stauffer Chemical Co. of Wyoming, 54 IBLA 85 (Apr. 14, 1981)

SPECIAL USE PERMITS

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for commercial river rafting where the proposed use would exceed the river's carrying capacity and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

Whitewater Expeditions & Tours, 52 IBLA 80 (Jan. 9, 1981)

SPECIAL USE PERMITS--Continued

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for an organized off-road motorcycle race where the proposed use would adversely affect critical deer winter range and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

Cascade Motorcycle Club, 56 IBLA 134 (July 20, 1981)

STATE EXCHANGES

(See also Exchanges of Land--if included in this Index.)

GENERALLY

A protest against approval of a state exchange application is properly dismissed where the exchange is shown to be in the public interest under sec. 206 of the Federal Land Policy and Management Act of 1976, and it is immaterial that the protestants may be permittees or licensees of the selected lands whose grazing privileges would have been lost upon completion of the exchange, in that neither a licensee nor a permittee has a vested right in the land covered by the license or permit and such land is available for selection by a state.

Bryner Wood, 52 IBLA 156 (Jan. 21, 1981) 88 I.R. 232

EFFECT OF APPLICATION

State exchange applications pending on Oct. 21, 1976, may be processed under sec. 8(c) of the Taylor Grazing Act, 43 U.S.C. § 315g(c) (1970), only if the state had complied with all the requirements necessary to vest rights to the exchange in the state; all other applications must be processed under sec. 206 of the Federal Land Policy and Management Act of 1976.

Bryner Wood, 52 IBLA 156 (Jan. 21, 1981) 88 I.R. 232

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

State exchange applications pending on Oct. 21, 1976, may be processed under sec. 8(c) of the Taylor Grazing Act, 43 U.S.C. § 315g(c) (1970), only if the state had complied with all the requirements necessary to vest rights to the exchange in the state; all other applications must be processed under sec. 206 of the Federal Land Policy and Management Act of 1976.

A state exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

STATE SELECTIONS

(See also School Lands, Swamplands--if included in this Index.)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates the lands from all subsequent appropriation, including location under the mining laws; however, the application to select has no segregative effect when at the time the application is filed, the land is withdrawn from all forms of appropriation under the public land laws, including selections by a state.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Applications for Alaska Native allotments in "core" townships of Native villages are subject to the statutory approval contained in sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, notwithstanding a State selection or tentative approval thereof for the same lands prior to Dec. 18, 1971.

Agnes S. Samuelson, 56 IBLA 242 (July 22, 1981)
88 I.D. 663

"Notation rule." Under the notation rule a mill-site claim, located at a time when the master title plat in the local Bureau of Land Management office shows that the lands embraced by the claim are included in a state selection application, is properly declared null and void ab initio because notation of the state selection application on the official records segregates the land from further appropriation. The rule applies even where the notation was posted in error, or where the segregative use so noted is void, voidable, or has terminated.

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands, where the filing is regular on its face, segregates the lands from all subsequent appropriation, including location and entry under the mining laws and a millsite located while the land is so segregated is null and void ab initio.

A mining claim or millsite located on land at a time when the land is segregated from the operation of the mining laws by a State selection application is properly declared null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

STATUTES

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

Joe Bastone, 52 IBLA 288 (Feb. 9, 1981)

L. L. Falter, John E. Weeks, 52 IBLA 313 (Feb. 10, 1981)

James C. Prebelich, 53 IBLA 34 (Feb. 26, 1981)

W. Keith Howard, 53 IBLA 92 (Mar. 2, 1981) 88 I.D. 341

St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981)

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

John Plutt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Joseph Ojurovich, 54 IBLA 100 (Apr. 15, 1981)

STATUTES--Continued

Bill C. Ross, 54 IBLA 116 (Apr. 16, 1981)

Charles W. McGowan III, 54 IBLA 119 (Apr. 16, 1981)

Mascot Silver-lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

Dell Warren, 54 IBLA 159 (Apr. 21, 1981)

William I. Schindler, 54 IBLA 221 (Apr. 23, 1981)

Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

William M. Hand, 54 IBLA 303 (Apr. 29, 1981)

Sidney Hodges, John Golden, 55 IBLA 17 (May 26, 1981)

Earl Kremiller, 55 IBLA 28 (May 27, 1981)

Joe Benham, 55 IBLA 45 (May 29, 1981)

Betty L. Henry, 55 IBLA 47 (May 29, 1981)

Vincent M. D'Amico, Wolt C. Stempel, 55 IBLA 116 (June 3, 1981)

Mart I. Gilmore, 55 IBLA 128 (June 3, 1981)

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

Alberta K. Romero, 55 IBLA 140 (June 4, 1981)

Joseph Ojurovich, 55 IBLA 182 (June 15, 1981)

W. LeGrande Law, 55 IBLA 193 (June 16, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)

Walter D. Cosdon, 56 IBLA 112 (July 16, 1981)

Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (July 20, 1981)

Rolland Marshall, 56 IBLA 187 (July 20, 1981)

Allen Turner, 56 IBLA 280 (July 28, 1981)

Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)

Fred W. Croxen III, 56 IBLA 318 (July 29, 1981)

Caroline E. Brown, 56 IBLA 334 (July 30, 1981)

Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)

Estate of Mary E. Ritchie, 56 IBLA 361 (Aug. 3, 1981)

Edith Gion, 56 IBLA 375 (Aug. 3, 1981)

Lela J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)

Norman L. Mocn, 57 IBLA 1 (Aug. 5, 1981)

Dave R. Newman, 57 IBLA 23 (Aug. 6, 1981)

Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)

L. Grace Wadsworth, 57 IBLA 242 (Aug. 27, 1981)

Intermountain Exploration Co., 57 IBLA 271 (Aug. 31, 1981)

Intermountain Exploration Co., 57 IBLA 274 (Aug. 31, 1981)

Del Rupp, 57 IBLA 297 (Aug. 31, 1981)

L. M. Fern, 57 IBLA 339 (Sept. 1, 1981)

Virgie Dowler, 57 IBLA 389 (Sept. 10, 1981)

STATUTES--Continued

Steven V. Miskoff, 58 IBLA 32 (Sept. 16, 1981)
James N. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)
Donald Jardine, 58 IBLA 49 (Sept. 21, 1981)
Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)
Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)
Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)
Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)
Tom Applegarth, 58 IBLA 224 (Sept. 30, 1981)
Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)
Richard W. Thom, 58 IBLA 291 (Oct. 13, 1981)
Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)
Lee R. Newson, 58 IBLA 325 (Oct. 16, 1981)
Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)
Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)
Ben M. Powell III, 59 IBLA 146 (Oct. 26, 1981)
Bruce A. DeRosier, 59 IBLA 283 (Oct. 30, 1981)
John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)
Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)
Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)
Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)
Dr. Jose Trabal, 60 IBLA 97 (Nov. 19, 1981)
Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)
James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)
Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (Nov. 27, 1981)
Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)
Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Lowell L. Patten, 52 IBLA 299 (Feb. 10, 1981)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

STATUTES--Continued

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

William Adolph Vonkee et al., 54 IBLA 232 (Apr. 27, 1981)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

STATUTORY CONSTRUCTIONADMINISTRATIVE CONSTRUCTION

Interpretation of the Alaska Native Claims Settlement Act by the Bureau of Indian Affairs contemporaneous with the enactment of the statute and continued over the succeeding 9 years is relevant to a determination of the application to be given to the statute. The Agency refusal to enroll persons who were not United States citizens on Dec. 18, 1971, the effective date of the Act, is a reasonable application of the Act and of Departmental regulations implementing the Act, and gives the language of the statute (43 U.S.C. § 1604 (1976)) its common and ordinary meaning.

United States v. Aimee Marion Bowen (Edenshaw) and Phyllis Josephine Kimball, 8 IBLA 218 (Feb. 12, 1981)
 88 I.L. 261

LEGISLATIVE HISTORY

The legislative history of sec. 6 of the Federal Coal Leasing Amendments Act shows that the revision of sec. 7 of the MLA (30 U.S.C. § 207) was not retroactive, but applied to new leases and to "old" leases upon readjustment. The ten-year production period and revised royalty rates of amended sec. 7 must be imposed on "old" coal leases at readjustment. The legislative history to the 1978 coal leasing revisions (Act of Oct. 30, 1978) discloses that Congress understood and acted on the assumption that the amended sec. 7 royalty rates did apply to all "old" leases upon readjustment.

Whether Leases Issued Prior to August 4, 1976, Subject to Readjustment after that Date Must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, H-36939 (Sept. 17, 1981)
 88 I.L. 1003

STOCK-RAISING HOMESTEADS

(See also Homesteads (Ordinary)--if included in this Index.)

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1976), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976). However, in a case where scoria is used no differently from common earth, the record must demonstrate that the deposit of scoria has commercial value independent of such use.

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

SUBMERGED LANDS

The Department of the Interior under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and State of Alaska, 5 ANCAB 324 (June 26, 1981) 88 I.D. 636

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon Ltd., 5 ANCAB 368 (July 27, 1981)

Doyon, Ltd., 6 ANCAB 27 (Aug. 19, 1981)

Doyon, Ltd., 6 ANCAB 32 (Aug. 19, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 45 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 50 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 55 (Aug. 24, 1981)

Doyon Ltd., 6 ANCAB 60 (Aug. 24, 1981)

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977ABATEMENTGenerally

A permittee's noncompliance with an order by OSM to abate an alleged violation of the backfilling and grading requirements of 30 CFR 715.14 cannot serve to excuse the permittee's noncompliance with an order by OSM to abate an alleged violation of the revegetation requirements of 30 CFR 715.20.

Old Home Manor, Inc., 3 IBSMA 241 (Aug. 13, 1981) 88 I.D. 737

Remedial Actions

A notice of violation requiring a permittee to submit a drainage design for regulatory authority approval is proper even when such a design might include disturbance of an area within 100 feet of an intermittent or perennial stream because the regulatory authority could grant an exemption for that area under either 30 CFR 717.17(a) or 715.17(d)(3).

Under the circumstances of this case, the Board declines to uphold a cessation order that forces a permittee to take an illegal action.

Little Byrd Coal Co., Inc., 3 IBSMA 136 (Apr. 30, 1981) 88 I.D. 503

The Board declines to hold that the permit boundary, as identified in a state permit, protects a permittee in all cases from being required to abate the off-site detrimental consequences of its operations.

Carbon Fuel Co., 3 IBSMA 207 (July 17, 1981) 88 I.D. 660

The Board will not uphold a cessation order issued for a failure to abate a violation charged where that failure is premised on noncompliance with a remedial measure which has no rational relationship to the violation charged.

West Virginia Energy, Inc., 3 IBSMA 301 (Sept. 17, 1981) 88 I.D. 831

ADMINISTRATIVE PROCEDUREGenerally

Under 43 CFR 4.1153 OSM has an absolute right to submit an answer to a petition within 30 days of its receipt of a copy of the petition. After that time, an Administrative Law Judge has discretion to regulate the scope of OSM's answer in a manner reasonably related to any prejudice suffered by the opposing party as a result of OSM's delay.

When an answer is filed by OSM after the time prescribed in 43 CFR 4.1153 but before any claim of prejudice from the delay is raised by the petitioner, it is an abuse of discretion for an Administrative Law Judge to issue, sua sponte, a summary decision in favor of the petitioner on the basis of presumed prejudice to the petitioner.

Lake Coal Co., Inc., 3 IBSMA 9 (Feb. 17, 1981) 88 I.D. 266

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

Although an Administrative Law Judge has discretion to take appropriate action to correct the late filing of an answer in a proceeding to review a notice of violation or a cessation order, except in extreme circumstances it is not appropriate to vacate the notice or order.

William Francis Rice, 3 IBSMA 17 (Feb. 19, 1981)
88 I.D. 269

A determination by an Administrative Law Judge, sua sponte, that an application for review is not in compliance with 43 CFR 4.1164 relieves OSM of its obligation to answer the application, and, unless otherwise ordered, OSM is entitled to the full 20 days prescribed in 43 CFR 4.1165(a) to answer an amended application.

Concord Coal Corp., 3 IBSMA 26 (Feb. 19, 1981)
88 I.D. 273

An Administrative Law Judge has discretion to determine appropriate action to correct the late filing of an answer in a proceeding to review a notice of violation; however, vacation of the notice of violation is not appropriate action when the applicant has shown no prejudice resulting from a late answer.

Peabody Coal Co., Inc., 3 IBSMA 32 (Mar. 3, 1981)
88 I.D. 344

An applicant for review of a notice of violation who voluntarily failed to appear at the scheduled review hearing was properly deemed to have waived its right to a hearing, and the Administrative Law Judge could accept as true the allegations of fact contained in the notice of violation under review.

Thoroughfare Coal Co., 3 IBSMA 72 (Mar. 25, 1981)
88 I.D. 406

Burden of Proof

In a civil penalty proceeding when OSM's prima facie case as to the fact of violation is effectively controverted by the person charged with the violation, the violation must be vacated because OSM has the ultimate burden of persuasion in accordance with 43 CFR 4.1155.

Belva Coal Co., Inc., 3 IBSMA 83 (Apr. 17, 1981)
88 I.D. 448

APPEALS

Generally

Once a right to appeal a decision of an OSM official has been granted, that right cannot be revoked without some express statement of and explanation for the revocation.

Under 43 CFR 4.1282(b), an appeal of a decision of an OSM official must be filed within 30 days of the date of the decision, if the person filing the appeal did not receive a copy of the decision.

The West Virginia Highlands Conservancy, 3 IBSMA 154 (May 28, 1981)
88 I.D. 570

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

--Continued

APPLICABILITY

Generally

"Extraction of coal as an incidental part." For the purposes of 30 U.S.C. § 1278(3) (Supp. II 1978) and 30 CFR 700.11(d), which exclude the "extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction" from the coverage of Federal performance standards otherwise applicable to surface coal mining operations, the phrase "extraction of coal as an incidental part" means, in accordance with 30 CFR 707.5, the extraction of coal which is necessary, from an engineering standpoint, to enable the construction to be accomplished and does not mean the extraction of coal for the purpose of financing the construction.

Concord Coal Corp., 3 IBSMA 92 (Apr. 17, 1981)
88 I.D. 456

"Roads maintained with public funds." Under an agreement with the West Virginia Department of Highways whereby the right-of-way for a secondary road has been reopened and maintained by a coal company for its use and that of the general public, the resulting road is not one "maintained with public funds" that is excluded from the definition of "roads" in 30 CFR 710.5 and, thus, the road is subject to the construction standards in 30 CFR 715.17(1) (2).

Rayle Coal Co., 3 IBSMA 111 (Apr. 27, 1981)
88 I.D. 492

Proof of the intention to mine coal and of a disturbance is sufficient to establish OSM's authority to regulate a site.

Russell Prater Land Co., Inc., 3 IBSMA 124 (Apr. 27, 1981)
88 I.D. 498

Release of a portion of a permittee's performance bond by a state does not reduce OSM's authority to regulate that permittee.

Grafton Coal Co., Inc., 3 IBSMA 175 (June 26, 1981)
88 I.D. 613

Where an operator removes coal in the process of rehabilitating a State road but there is no proof that the State expended funds to finance the project comprising at least 50 percent of the cost of the project, the project does not fall within the definition of "Government-financed construction" in 30 CFR 707.5, and the operator therefore cannot claim the exemption from applicability of the Act appearing in sec. 528(3).

West Virginia Energy, Inc., 3 IBSMA 301 (Sept. 17, 1981)
88 I.D. 831

Initial Regulatory Program

The initial program regulations are applicable to a surface coal mining operation immediately when a state permit for the operation is issued on or after Feb. 3, 1978.

Universal Coal Co., 3 IBSMA 200 (July 16, 1981)
88 I.D. 657

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

--Continued

APPLICABILITY--Continued

Initial Regulatory Program--Continued

Compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance standards.

Greater Pardee, Inc., 3 IBSMA 313 (Sept. 24, 1981)
88 I.D. 846

APPROXIMATE ORIGINAL CONTOUR

Generally

"Appropriate contour." "Appropriate contour," as used in 30 CFR 715.14(e), is not synonymous with "approximate original contour."

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

ATTORNEYS' FEES/COSTS AND EXPENSES

Bad Faith/Harassment

The fact that a permittee prevailed before the Hearings Division does not establish that OSM's enforcement action was undertaken in bad faith and for the purpose of harassing or embarrassing the permittee.

Delta Mining Corp., 3 IBSMA 252 (Aug. 13, 1981)
88 I.D. 742

Final Order

A qualitative analysis of any order asserted to be a final order of the Office of Hearings and Appeals which is a prerequisite to an award of costs and expenses under the Act must be done before such an award may be considered further; the regulations contemplate that such a qualifying final order will have been issued by OHA setting forth a judgment on the merits of the resolution of the administrative proceeding. Here no such order has been issued and an award would thus be inappropriate.

Council of the Southern Mountains, Inc. v. Office of Surface Mining Reclamation and Enforcement, 3 IBSMA 44 (Mar. 23, 1981) 88 I.D. 394

Standards for Award

The Office of Hearings and Appeals will follow the standards for award of costs and expenses including attorneys' fees set out by the D.C. Circuit Court of Appeals in Copeland v. Marshall, F.2d (1980).

Council of the Southern Mountains, Inc. v. Office of Surface Mining Reclamation and Enforcement, 3 IBSMA 44 (Mar. 23, 1981) 88 I.D. 394

Substantial Contribution

Where, largely due to what may have earlier appeared to have been a Board indication that it had resolved the compensation issue in petitioner's favor, petitioner made a substantial contribution to the determination of the standards to be used in cases for award of costs and expenses, it would be

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

--Continued

ATTORNEYS' FEES/COSTS AND EXPENSES--Continued

Substantial Contribution--Continued

grossly unfair not to compensate petitioner for that contribution.

Council of the Southern Mountains, Inc. v. Office of Surface Mining Reclamation and Enforcement, 3 IBSMA 44 (Mar. 23, 1981) 88 I.D. 394

BACKFILLING AND GRADING REQUIREMENTS

Generally

Backfilling and grading requirements of 30 CFR 715.14 are to be satisfied as contemporaneously as possible with surface coal mining operations to accomplish timely reclamation of disturbed areas.

Whether particular backfilling and grading activity is timely must be determined taking into account the overall circumstances of a surface coal mining and reclamation operation.

Old Home Manor, Inc., 3 IBSMA 241 (Aug. 13, 1981)
88 I.D. 737

Highwall Elimination

Elimination of that portion of a highwall created before May 3, 1978, will not be required when OSM, after negotiations with the permittee, agrees that pre-May 3 highwalls need not be eliminated and does not dispute that part of the highwall was created before that date, and when there is no evidence that post-May 3 operations had any adverse physical impact on the pre-May 3 highwall.

Atomic Fuel Coal Co., Inc., 3 IBSMA 107 (Apr. 23, 1981)
88 I.D. 477

Even where approval has been granted to construct a cut-and-fill terrace, 30 CFR 715.14(b)(2)(iii) requires that no highwalls be left.

Grafton Coal Co., Inc., 3 IBSMA 175 (June 26, 1981)
88 I.D. 613

Previously Mined Lands

The backfilling and grading requirements of 30 CFR 715.14 apply to previously mined lands where surface coal mining operations result in an adverse physical impact to the preexisting highwall which is reaffected by such operations.

Mountain Enterprises Coal Co., 3 IBSMA 338 (Sept. 25, 1981) 88 I.D. 861

BONDS

Release of

Release of a portion of a permittee's performance bond by a state does not reduce OSM's authority to regulate that permittee.

Grafton Coal Co., Inc., 3 IBSMA 175 (June 26, 1981)
88 I.D. 613

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CESSATION ORDERS

Generally

OSM has established a prima facie case that a cessation order was properly issued when it shows a violation, practice, or condition that is causally connected to significant, imminent environmental harm or a reasonable expectation of such harm.

Cessation orders are extreme sanctions and should not be issued indiscriminately, but where the prerequisites for a cessation order are found, there need be no hesitation in closing the operation or its relevant portion.

Under the circumstances of this case, a cessation order requiring that all underground pumping of slurry be stopped was not overly broad.

Island Creek Coal Co., 3 IBSMA 165 (June 15, 1981)
88 I.D. 581

The Board will not uphold a cessation order issued for a failure to abate a violation charged where that failure is premised on noncompliance with a remedial measure which has no rational relationship to the violation charged.

West Virginia Energy, Inc., 3 IBSMA 301 (Sept. 17, 1981)
88 I.D. 831

CIVIL PENALTIES

Generally

A civil penalty will not be disturbed when the person assessed does not seek review of the penalty amount, and the underlying violation is not vacated.

Little Byrd Coal Co., Inc., 3 IBSMA 136 (Apr. 30, 1981)
88 I.D. 503

Although the Hearings Division is not bound to accept the OSM Assessment Branch's evaluation of the evidence in terms of assigning civil penalty points, where an Administrative Law Judge finds a violation occurred, he is required to adhere to the point system in 30 CFR 723.13 unless he determines that a waiver would further abatement of violations of the Act.

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981)
88 I.D. 826

Amount

A civil penalty assessment based on a part of a cessation order that is vacated after administrative review cannot be upheld whether or not review was sought of the penalty amount.

Little Byrd Coal Co., Inc., 3 IBSMA 136 (Apr. 30, 1981)
88 I.D. 503

Hearings Procedure

Under 43 CFR 4.1153 OSM has an absolute right to submit an answer to a petition within 30 days of its receipt of a copy of the petition. After that time, an Administrative Law Judge has discretion to

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CIVIL PENALTIES--Continued

Hearings Procedure--Continued

regulate the scope of OSM's answer in a manner reasonably related to any prejudice suffered by the opposing party as a result of OSM's delay.

When an answer is filed by OSM after the time prescribed in 43 CFR 4.1153 but before any claim of prejudice from the delay is raised by the petitioner, it is an abuse of discretion for an Administrative Law Judge to issue, sua sponte, a summary decision in favor of the petitioner on the basis of presumed prejudice to the petitioner.

Lake Coal Co., Inc., 3 IBSMA 9 (Feb. 17, 1981)
88 I.D. 266

In a civil penalty proceeding when OSM's prima facie case as to the fact of violation is effectively controverted by the person charged with the violation, the violation must be vacated because OSM has the ultimate burden of persuasion in accordance with 43 CFR 4.1155.

Belva Coal Co., Inc., 3 IBSMA 83 (Apr. 17, 1981)
88 I.D. 448

Even where the petitioner, in a civil penalty proceeding, admits the validity of the issuance of a notice of violation and the hearing proceeds on the penalty amount issues only, the Administrative Law Judge is not bound to accept the admission when the penalty amount evidence raises a question in his mind whether the violation in fact occurred.

Where the parties have agreed to the existence of a violation and a penalty hearing is conducted on the basis of that agreement, if the Administrative Law Judge determines, either during or after the hearing, that the evidence may not support a violation, he shall make that determination known to the parties and, if necessary, reopen the hearing to allow OSM an opportunity to prove its case and the operator to counter that proof.

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981)
88 I.D. 826

Where OSM fails to serve permittee with copy of a proposed assessment and of the worksheets showing the computation within 30 days of the issuance of the notice of violation, pursuant to regulation, such failure shall not result in administrative relief since the regulation is directory rather than mandatory.

Sabara Coal Co., 3 IBSMA 371 (Nov. 30, 1981) 88 I.D. 1025

ENFORCEMENT PROCEDURES

Generally

Because elapsed time is not a reason for failure to cite a violation of the Act and regulations discovered during an inspection, the fact that a permittee manages to complete an illegal action between inspections does not of itself protect it against a citation for the violation.

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ENFORCEMENT PROCEDURES--Continued

Generally--Continued

Filing an application for review of a notice of violation does not stay that notice.

Atomic Fuel Co., Inc., 3 IBSMA 287 (Sept. 17, 1981)
88 I.D. 824

ENVIRONMENTAL HARM

Generally

OSM has established a prima facie case that a cessation order was properly issued when it shows a violation, practice, or condition that is causally connected to significant, imminent environmental harm or a reasonable expectation of such harm.

Island Creek Coal Co., 3 IBSMA 165 (June 15, 1981)
88 I.D. 581

EVIDENCE

Generally

In a civil penalty proceeding when OSM's prima facie case as to the fact of violation is effectively controverted by the person charged with the violation, the violation must be vacated because OSM has the ultimate burden of persuasion in accordance with 43 CFR 4.1155.

Belva Coal Co., Inc., 3 IBSMA 83 (Apr. 17, 1981)
88 I.D. 448

Competent evidence that the person listed in state records as permittee over an area had no legal right under state law to mine or reclaim that area and that the person was not conducting mining or reclamation operations there as contemplated in 30 CFR 700.5 (1978) is sufficient to rebut a prima facie showing that the person is the permittee.

Marco, Inc., 3 IBSMA 128 (Apr. 27, 1981) 88 I.D. 500

OSM is entitled to determine, on the basis of the evidence available to it, that a violation could not be proven, even if one had occurred.

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

A negative determination on the existence of prime farmlands issued by a state after the permittee has been cited by OSM for violating the prime farmlands regulations may be submitted as evidence of whether or not prime farmlands exist on the site, but it is not necessarily entitled to retroactive effect.

Universal Coal Co., 3 IBSMA 200 (July 16, 1981)
88 I.D. 657

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

HEARINGS

Procedure

Although an Administrative Law Judge has discretion to take appropriate action to correct the late filing of an answer in a proceeding to review a notice of violation or a cessation order, except in extreme circumstances it is not appropriate to vacate the notice or order.

William Francis Rice, 3 IBSMA 17 (Feb. 19, 1981)
88 I.D. 269

A determination by an Administrative Law Judge, sua sponte, that an application for review is not in compliance with 43 CFR 4.1164 relieves OSM of its obligation to answer the application, and, unless otherwise ordered, OSM is entitled to the full 20 days prescribed in 43 CFR 4.1165(a) to answer an amended application.

Concord Coal Corp., 3 IBSMA 26 (Feb. 19, 1981)
88 I.D. 273

An Administrative Law Judge has discretion to determine appropriate action to correct the late filing of an answer in a proceeding to review a notice of violation; however, vacation of the notice of violation is not appropriate action when the applicant has shown no prejudice resulting from a late answer.

Peabody Coal Co., Inc., 3 IBSMA 32 (Mar. 3, 1981)
88 I.D. 344

An applicant for review of a notice of violation who voluntarily failed to appear at the scheduled review hearing was properly deemed to have waived its right to a hearing, and the Administrative Law Judge could accept as true the allegations of fact contained in the notice of violation under review.

Thoroughfare Coal Co., 3 IBSMA 72 (Mar. 25, 1981)
88 I.D. 406

Even where the petitioner, in a civil penalty proceeding, admits the validity of the issuance of a notice of violation and the hearing proceeds on the penalty amount issues only, the Administrative Law Judge is not bound to accept the admission when the penalty amount evidence raises a question in his mind whether the violation in fact occurred.

Where the parties have agreed to the existence of a violation and a penalty hearing is conducted on the basis of that agreement, if the Administrative Law Judge determines, either during or after the hearing, that the evidence may not support a violation, he shall make that determination known to the parties and, if necessary, reopen the hearing to allow OSM an opportunity to prove its case and the operator to counter that proof.

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981)
88 I.D. 826

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

HYDROLOGIC SYSTEM PROTECTION

Generally

"Underground operations." Because of the definition of "underground operations" in 30 CFR 717.11(a) (1), the ground water monitoring requirements of sec. 717.17(h) (1) and (h) (2) of 30 CFR do not apply to an inactive mine where the only underground activity is the mechanical removal of accumulated water.

Consolidation Coal Co., 3 IBSMA 228 (July 31, 1981)
88 I.D. 685

Effluent limitations are applicable under 30 CFR 715.17 to discharges of drainage from areas disturbed by surface coal mining and reclamation operations, and not only to discharges of drainage from an "active mine area," as defined in the U.S. Environmental Protection Agency's regulations for effluent limitations under the coal mining point source category, set forth at 40 CFR Part 434.

Under the provisions of 30 CFR 715.17, the effluent limitations are not applicable to any discharge or overflow caused by precipitation or snowmelt in accordance with the regulations of the U.S. Environmental Protection Agency in 40 CFR Part 434.

Entitlement to an exemption from the application of effluent limitations to discharges from a sedimentation pond resulting from a precipitation event is conditioned on a demonstration that the sedimentation pond was constructed and has been maintained to contain or treat the volume of water which would run off into the pond during a 10-year 24-hour or greater precipitation event.

The U.S. Environmental Protection Agency's provisions, at 40 CFR 122.63(g) and (h), for a credit for pollutants in discharges attributable to intake waters, if applicable under 30 CFR 715.17, require that the credit be authorized in a permit for a surface coal mining and reclamation operation on the basis of a demonstration that the intake water is drawn from the same body of water into which discharges are made.

Under 30 CFR 715.17, the effluent limitations are to be applied at the point of discharge from a sedimentation pond or the last pond in a series of sedimentation ponds, absent express prior approval to the contrary by the regulatory authority.

Island Creek Coal Co., 3 IBSMA 383 (Dec. 23, 1981)
88 I.D. 1122

IMPOUNDMENTS

Generally

"Appropriate contour." "Appropriate contour," as used in 30 CFR 715.14(e), is not synonymous with "approximate original contour."

Although, in general, a permanent impoundment should be contoured before it is filled with water, on the evidence available in this case, we decline to hold that the reclamation techniques used were illegal.

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

INITIAL REGULATORY PROGRAM

Generally

Because compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance requirements, a decision by a state regulatory authority not to include a haul road within the area under state permit does not preclude application of the Federal requirements to the road.

Bayle Coal Co., 3 IBSMA 111 (Apr. 27, 1981)
88 I.D. 492

During the initial regulatory program, OSM may defer to the state for an initial determination on valid existing rights, but when that determination is properly questioned, OSM has an independent responsibility to review it to ensure that it was made in compliance with the initial program regulations.

Ronald W. Johnson, 3 IBSMA 118 (Apr. 27, 1981)
88 I.D. 495

Compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance standards.

Mountain Enterprises Coal Co., 3 IBSMA 338 (Sept. 25, 1981)
88 I.D. 861

INSPECTIONS

Generally

Prior presentation of credentials by an OSM inspector is not required when no employee of the operator is present on the minesite.

Grafton Coal Co., Inc., 3 IBSMA 175 (June 26, 1981)
88 I.D. 613

OSM has a duty to investigate thoroughly a citizen's accusation that a state has failed to meet its obligations.

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

OSM inspectors are not required by sec. 517(b) (3) of the Act and 30 CFR 721.12(a) to present their credentials prior to inspecting an inactive minesite at which no one associated with the mining operation is present.

William M. Johnson, 3 IBSMA 377 (Dec. 18, 1981)
88 I.D. 1112

NOTICES OF VIOLATION

Generally

A modification of a notice of violation can change obligations in any way necessary to ensure compliance with the Act and regulations so long as the specificity requirements of sec. 521(a) (5) of the Act are met.

OSM does not have authority to extend the abatement period in a notice of violation beyond 90 days.

Universal Coal Co., 3 IBSMA 218 (July 28, 1981)
88 I.D. 672

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

NOTICES OF VIOLATION--Continued

Generally--Continued

Where OSM fails to serve permittee with copy of a proposed assessment and of the worksheets showing the computation within 30 days of the issuance of the notice of violation, pursuant to regulation, such failure shall not result in administrative relief since the regulation is directory rather than mandatory.

Sahara Coal Co., 3 IBSMA 371 (Nov. 30, 1981) 88 I.D. 1025

Permittees

OSM may rely on state records to determine the permittee of an area.

Competent evidence that the person listed in state records as permittee over an area had no legal right under state law to mine or reclaim that area and that the person was not conducting mining or reclamation operations there as contemplated in 30 CFR 700.5 (1978) is sufficient to rebut a prima facie showing that the person is the permittee.

Marco, Inc., 3 IBSMA 128 (Apr. 27, 1981) 88 I.D. 500

During the initial regulatory program the person named in the state permit for a surface coal mining operation is the permittee with respect to that operation and, as such, a proper person to be issued a notice of violation concerning the operation.

Pierce Coal and Construction, Inc., 3 IBSMA 350 (Sept. 25, 1981) 88 I.D. 867

Remedial Actions

The remedial action required in a notice of violation may be modified in the document terminating the notice if the termination clearly shows in writing the remedial action accepted by OSM as an alternative abatement.

Drummond Coal Co., 3 IBSMA 100 (Apr. 21, 1981) 88 I.D. 474

PRIME FARMLANDS

Negative Determination

When a state does not issue a negative determination on the existence of prime farmlands at the time the permit is issued and OSM alleges a violation of the prime farmland regulations, the permittee must demonstrate that prime farmlands do not exist on the site.

A negative determination on the existence of prime farmlands issued by a state after the permittee has been cited by OSM for violating the prime farmlands regulations may be submitted as evidence of whether or not prime farmlands exist on the site, but it is not necessarily entitled to retroactive effect.

Universal Coal Co., 3 IBSMA 200 (July 16, 1981) 88 I.D. 657

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

PUBLIC HEALTH AND SAFETY

Imminent Danger

30 CFR 710.11(a)(2)(ii) prohibits operations that "result in" imminent danger to the public.

"Imminent danger." A condition constitutes an imminent danger to the health or safety of the public when it creates the possibility of substantial injury that a rational person, cognizant of the danger involved, would choose to avoid.

Carbon Fuel Co., 3 IBSMA 207 (July 17, 1981) 88 I.D. 660

ROADS

Maintenance

"Road." A "road" that leads from a coal stockpile of an underground mining operation to a state road and over which coal trucks travel in moving between the stockpile and the state road is a road within the meaning of 30 CFR 710.5 and is subject to the maintenance requirements of 30 CFR 717.17(j)(3)(i).

The road maintenance requirement of 30 CFR 717.17(j)(3)(i) is a preventive measure and proof of the existence of the harm it is intended to prevent is not necessary to establish a violation of that requirement; proof of the road's condition and maintenance practices of the road is required.

Belva Coal Co., Inc., 3 IBSMA 83 (Apr. 17, 1981) 88 I.D. 448

SIGNS AND MARKERS

Generally

Where a mine identification sign is located on one side of a highway and is clearly visible from the other side from which there is access to the mine's nearby processing facility, the Board is unwilling to say that that is insufficient to comply with the requirement of 30 CFR 715.12(b).

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981) 88 I.D. 826

SPOIL AND MINE WASTES

Generally

"Excess." When evidence does not support a finding that material removed from an underground mine is in excess of that which will be necessary to achieve approximate original contour, a violation of 30 CFR 717.15 cannot be upheld.

Tennessee Consolidated Coal Co., Inc., 3 IBSMA 145 (Apr. 30, 1981) 88 I.D. 508

"Excess spoil." When the evidence does not support a finding that spoil is being used to achieve the approximate original contour of the mined area, temporary relief will not be granted from an alleged violation of the requirements for the handling of excess spoil set forth in 30 CFR 715.15(a).

King Quarries, Inc., 3 IBSMA 357 (Sept. 29, 1981) 88 I.D. 892

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

SPOIL AND MINE WASTES--Continued

Downslope

"Dropslope." The dropslope in a multiple seam mining operation is the portion of the permit area below the actual and projected outcrop of the lowest seam being mined.

Toptiki Coal Corp. (On Reconsideration), 3 IBSMA 40
(Mar. 16, 1981) 88 I.D. 367

STATE REGULATION

Generally

Because compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance requirements, a decision by a state regulatory authority not to include a haul road within the area under state permit does not preclude application of the Federal requirements to the road.

Rayle Coal Co., 3 IBSMA 111 (Apr. 27, 1981)
88 I.D. 492

During the initial regulatory program, OSM may defer to the state for an initial determination on valid existing rights, but when that determination is properly questioned, OSM has an independent responsibility to review it to ensure that it was made in compliance with the initial program regulations.

Ronald W. Johnson, 3 IBSMA 118 (Apr. 27, 1981)
88 I.D. 495

OSM has a duty to investigate thoroughly a citizen's accusation that a state has failed to meet its obligations.

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

Compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance standards.

Greater Pardee, Inc., 3 IBSMA 313 (Sept. 24, 1981)
88 I.D. 846

Mountain Enterprises Coal Co., 3 IBSMA 338 (Sept. 25, 1981)
88 I.D. 861

TEMPORARY RELIEF

Generally

Where OSM provides the maximum time allowable under 30 CFR 722.12(d) for the abatement of a violation, an Administrative Law Judge may not effectively extend this time by granting temporary relief from the abatement requirement.

Old Home Manor, Inc., 3 IBSMA 241 (Aug. 13, 1981)
88 I.D. 737

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

TEMPORARY RELIEF--Continued

Applications

Because temporary relief is an extraordinary remedy that may be requested in a pending case, an application for temporary relief not preceded or accompanied by an application for review of a notice, order, or civil penalty should be dismissed.

Universal Coal Co., 3 IBSMA 218 (July 28, 1981)
88 I.D. 672

TIPPLES AND PROCESSING PLANTS

At or Near a Minesite

"Surface coal mining operations." Mere evidence that a coal processing facility receives some undisclosed percentage of the coal production of two mines operated in connection with the facility, and located distances of 8 and 11 miles from the facility, is not sufficient to establish that the facility is "at or near" either of the mines, within the meaning of the definition of "surface coal mining operations" at 30 CFR 700.5.

Reitz Coal Co., 3 IBSMA 260 (Aug. 20, 1981) 88 I.D. 745

"Surface coal mining operations." Under the facts of this case a processing plant located 22 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Ross Tipple Co., 3 IBSMA 322 (Sept. 24, 1981)
88 I.D. 851

TOPSOIL

Generally

Because neither the Act nor the regulations make only "irreplaceable" topsoil subject to 30 CFR 715.16, all topsoil is covered by that regulation.

Drummond Coal Co., 3 IBSMA 100 (Apr. 21, 1981)
88 I.D. 474

"Contaminant." Where OSM shows that spoil materials have been mixed with topsoil it has made a prima facie case of a violation of 30 CFR 715.16 for failure to protect the topsoil from contaminants.

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981)
88 I.D. 826

Redistribution

"Topsoil." For purposes of the redistribution requirements of 30 CFR 715.16(b), topsoil means at least the same material as was required under 30 CFR 715.16(a) to be removed from areas to be disturbed by surface coal mining operations.

There is a violation of 30 CFR 715.16(b) when topsoil is redistributed in a way that does not protect it from erosion and no other protective measures are taken.

Drummond Coal Co., 3 IBSMA 100 (Apr. 21, 1981)
88 I.D. 474

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

UNDERGROUND OPERATIONS

Generally

"Underground operations." Because of the definition of "underground operations" in 30 CFR 717.11(a)(1), the ground water monitoring requirements of sec. 717.17(h)(1) and (h)(2) of 30 CFR do not apply to an inactive mine where the only underground activity is the mechanical removal of accumulated water.

Consolidation Coal Co., 3 IBSMA 228 (July 31, 1981)
88 I.D. 685

VARIANCES AND EXEMPTIONS

Generally

Under the provisions of 30 CFR 715.17, the effluent limitations are not applicable to any discharge or overflow caused by precipitation or snowmelt in accordance with the regulations of the U.S. Environmental Protection Agency in 40 CFR Part 434.

Entitlement to an exemption from the application of effluent limitations to discharges from a sedimentation pond resulting from a precipitation event is conditioned on a demonstration that the sedimentation pond was constructed and has been maintained to contain or treat the volume of water which would run off into the pond during a 10-year 24-hour or greater precipitation event.

The U.S. Environmental Protection Agency's provisions, at 40 CFR 122.63(g) and (h), for a credit for pollutants in discharges attributable to intake waters, if applicable under 30 CFR 715.17, require that the credit be authorized in a permit for a surface coal mining and reclamation operation on the basis of a demonstration that the intake water is drawn from the same body of water into which discharges are made.

Island Creek Coal Co., 3 IBSMA 383 (Dec. 23, 1981)
88 I.D. 1122

2-Acre

The Office of Surface Mining Reclamation and Enforcement has jurisdiction to enforce the initial Federal performance standards against a surface disturbance in Kentucky of less than 2 acres and the Federal 2-acre exemption set forth in 30 CFR 700.11(b) is not applicable where the disturbance is physically related to a surface coal mining operation under permit from the Commonwealth of Virginia, and where the disturbance is not a discrete operation but was undertaken in furtherance of the Virginia operation.

Blackwood Fuel Co., Inc., 2 IBSMA 359 (Nov. 24, 1980)
87 I.D. 579

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

Generally

Under the provisions of 30 CFR 715.17, the effluent limitations are not applicable to any discharge or overflow caused by precipitation or snowmelt in accordance with the regulations of the U.S. Environmental Protection Agency in 40 CFR Part 434.

Entitlement to an exemption from the application of effluent limitations to discharges from a sedimentation pond resulting from a precipitation event is conditioned on a demonstration that the sedimentation pond was constructed and has been maintained to contain or treat the volume of water which would run off into the

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Generally--Continued

pond during a 10-year 24-hour or greater precipitation event.

The U.S. Environmental Protection Agency's provisions, at 40 CFR 122.63(g) and (h), for a credit for pollutants in discharges attributable to intake waters, if applicable under 30 CFR 715.17, require that the credit be authorized in a permit for a surface coal mining and reclamation operation on the basis of a demonstration that the intake water is drawn from the same body of water into which discharges are made.

Under 30 CFR 715.17, the effluent limitations are to be applied at the point of discharge from a sedimentation pond or the last pond in a series of sedimentation ponds, absent express prior approval to the contrary by the regulatory authority.

Island Creek Coal Co., 3 IBSMA 383 (Dec. 23, 1981)
88 I.D. 1122

Discharges from Disturbed Areas

Effluent limitations are applicable under 30 CFR 715.17 to discharges of drainage from areas disturbed by surface coal mining and reclamation operations, and not only to discharges of drainage from an "active mine area," as defined in the U.S. Environmental Protection Agency's regulations for effluent limitations under the coal mining point source category, set forth at 40 CFR Part 434.

Island Creek Coal Co., 3 IBSMA 383 (Dec. 23, 1981)
88 I.D. 1122

WORDS AND PHRASES

"Appropriate contour." "Appropriate contour," as used in 30 CFR 715.14(e), is not synonymous with "approximate original contour."

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

"Contaminant." Where OSM shows that spoil materials have been mixed with topsoil it has made a prima facie case of a violation of 30 CFR 715.16 for failure to protect the topsoil from contaminants.

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981)
88 I.D. 826

"Downslope." The downslope in a multiple seam mining operation is the portion of the permit area below the actual and projected outcrop of the lowest seam being mined.

Toptiki Coal Corp. (On Reconsideration), 3 IBSMA 40 (Mar. 16, 1981)
88 I.D. 367

"Excess." When evidence does not support a finding that material removed from an underground mine is in excess of that which will be necessary to achieve approximate original contour, a violation of 30 CFR 717.15 cannot be upheld.

Tennessee Consolidated Coal Co., Inc., 3 IBSMA 145 (Apr. 30, 1981)
88 I.D. 508

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WORDS AND PHRASES--Continued

"Excess spoil." When the evidence does not support a finding that spoil is being used to achieve the approximate original contour of the mined area, temporary relief will not be granted from an alleged violation of the requirements for the handling of excess spoil set forth in 30 CFR 715.15(a).

King Quarries, Inc., 3 IBMSA 357 (Sept. 29, 1981)
88 I.D. 892

"Extraction of coal as an incidental part." For the purposes of 30 U.S.C. § 1278(3) (Supp. II 1978) and 30 CFR 700.11(d), which exclude the "extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction" from the coverage of Federal performance standards otherwise applicable to surface coal mining operations, the phrase "extraction of coal as an incidental part" means, in accordance with 30 CFR 707.5, the extraction of coal which is necessary, from an engineering standpoint, to enable the construction to be accomplished and does not mean the extraction of coal for the purpose of financing the construction.

Concord Coal Corp., 3 IBMSA 92 (Apr. 17, 1981)
88 I.D. 456

"Imminent danger." A condition constitutes an imminent danger to the health or safety of the public when it creates the possibility of substantial injury that a rational person, cognizant of the danger involved, would choose to avoid.

Carbon Fuel Co., 3 IBMSA 207 (July 17, 1981)
88 I.D. 660

"Road." A "road" that leads from a coal stockpile of an underground mining operation to a state road and over which coal trucks travel in moving between the stockpile and the state road is a road within the meaning of 30 CFR 710.5 and is subject to the maintenance requirements of 30 CFR 717.17(j) (3) (i).

Belva Coal Co., Inc., 3 IBMSA 83 (Apr. 17, 1981)
88 I.D. 448

"Roads maintained with public funds." Under an agreement with the West Virginia Department of Highways whereby the right-of-way for a secondary road has been reopened and maintained by a coal company for its use and that of the general public, the resulting road is not one "maintained with public funds" that is excluded from the definition of "roads" in 30 CFR 710.5 and, thus, the road is subject to the construction standards in 30 CFR 715.17(l) (2).

Rayle Coal Co., 3 IBMSA 111 (Apr. 27, 1981)
88 I.D. 492

"Surface coal mining operations." Extraction of coal from a coal refuse pile is an activity which falls within the definition of "surface coal mining operations," as contained in revised Part 700, and OSM has authority to regulate such an operation during the initial regulatory program.

Farmington Coal Co., 3 IBMSA 182 (June 29, 1981)
88 I.D. 616

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WORDS AND PHRASES--Continued

"Surface coal mining operations." Mere evidence that a coal processing facility receives some undisclosed percentage of the coal production of two mines operated in connection with the facility, and located distances of 8 and 11 miles from the facility, is not sufficient to establish that the facility is "at or near" either of the mines, within the meaning of the definition of "surface coal mining operations" at 30 CFR 700.5.

Reitz Coal Co., 3 IBMSA 260 (Aug. 20, 1981) 88 I.D. 745

"Surface coal mining operations." Under the facts of this case a processing plant located 22 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Ross Tipple Co., 3 IBMSA 322 (Sept. 24, 1981)
88 I.D. 851

"Topsoil." For purposes of the redistribution requirements of 30 CFR 715.16(b), topsoil means at least the same material as was required under 30 CFR 715.16(a) to be removed from areas to be disturbed by surface coal mining operations.

Drummond Coal Co., 3 IBMSA 100 (Apr. 21, 1981)
88 I.D. 474

"Underground operations." Because of the definition of "underground operations" in 30 CFR 717.11(a) (1), the ground water monitoring requirements of sec. 717.17(h) (1) and (h) (2) of 30 CFR do not apply to an inactive mine where the only underground activity is the mechanical removal of accumulated water.

Consolidation Coal Co., 3 IBMSA 228 (July 31, 1981)
88 I.D. 685

SURFACE RESOURCES ACT

(See also Hearings, Mining Claims--if included in this Index.)

GENERALLY

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a mining claim for such material located prior to the date of the Act to be sustained, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and maintained reasonably continuously thereafter.

United States v. Estrella M. Kincannon et al., 54 IBLA 95 (Apr. 15, 1981)

APPLICABILITY

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Home-Steak Act, 43 U.S.C. § 299 (1976).

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

SURFACE RESOURCES ACT--Continued

VERIFIED STATEMENT

A verified statement filed under sec. 5 of the Surface Resources Act of 1955, 30 U.S.C. § 613 (1976), is properly rejected when the mining claim in connection with which it is filed has been declared abandoned and void for failure to comply with the recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Paul R. Scott and Betty F. Scott, 53 IBLA 75 (Mar. 2, 1981)

SURPLUS PROPERTY

(See also Federal Property & Administrative Services Act--if included in this Index.)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Edward C. Shephardson, 53 IBLA 79 (Mar. 2, 1981)

SURVEYS OF PUBLIC LANDS

(See also Boundaries, Public Lands--if included in this Index.)

DEPENDENT RESURVEYS

Restoration of a lost corner by means of proportionate measurement in accordance with the record of the original survey is the proper procedure in a dependent resurvey where there is a lack of conclusive evidence as to the location of the original survey corner.

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Paul N. Scherbel, 58 IBLA 52 (Sept. 21, 1981)

TAYLOR GRAZING ACT

(See also Grazing Leases, Grazing Permits & Licenses--if included in this Index.)

GENERALLY

Neither FLPMA nor the Taylor Grazing Act authorizes appropriation of water or provide an independent statutory basis for claims for water uses inconsistent in any way with the substantive requirements of state law.

Supplement to Solicitor Opinion No. M-36914, on Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (Supp.) (Jan. 16, 1981)

88 I.D. 253

TAYLOR GRAZING ACT--Continued

GENERALLY--Continued

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

TIMBER SALES AND DISPOSALS

Under a lump sum contract for a designated lot of timber in a described area, the contract price does not vary with the quantity or quality of timber actually located therein. The phrase "more or less" in these contracts will be given its plain and literal meaning.

Where a contract for the sale of timber contains a disclaimer of warranty by the vendor as to the quantity of timber sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain. Thus, the fact that the quantity of timber available for harvesting turned out to be less than was expected at the time of contracting is not a basis for a claim to a refund.

In legal effect, a vendor's estimate of quantity or quality of a specific lot of timber is sui generis because it cannot be determined with certainty except by harvesting and, even then, there is room for disagreement as to whether all merchantable timber was harvested by the vendee.

Where warranty as to quality and quantity is specifically disclaimed by the Government in a timber cruise sale contract, only good faith is required of the Government in naming an estimated amount.

Gregory Lumber Co., Inc., 54 IBLA 309 (Apr. 30, 1981)

Guidelines issued under BLM Manual sec. 1791 relating to preparation of an environmental analysis record with regard to a proposed timber sale are not the type of material required by 5 U.S.C. § 552(a)(1)(D) to be published in the Federal Register and as such are not binding on BLM.

A decision by a BLM district office to proceed with a proposed timber sale which was made after consideration of all relevant factors and which is supported by the record will not be set aside in the absence of a showing that the decision is clearly in error.

Lane County Audubon Society, 55 IBLA 171 (June 11, 1981)

TRESPASS

GENERALLY

In determining whether grazing trespasses are "willful," intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his or her conduct was so lacking in

TRESPASS--Continued

GENERALLY--Continued

reasonableness or responsibility that it became reckless or negligent.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect; however, upon review where it is determined that damages were not properly calculated, the case may be remanded for recalculation of the trespass charges.

Penasco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

The Board of Land Appeals will not dismiss or set aside a decision by the Bureau of Land Management holding an appellant liable for an innocent mineral trespass solely because a notice of trespass cited a criminal statute.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

MEASURE OF DAMAGES

Bureau of Land Management properly rejects an application for the sale of public land pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1976), where the applicant refuses to pay related damages for unauthorized use of the land. Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

Reed Z. Asay, 55 IBLA 157 (June 9, 1981)

Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect; however, upon review where it is determined that damages were not properly calculated, the case may be remanded for recalculation of the trespass charges.

Penasco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970
(See also Appeals--if included in this Index.)

GENERALLY

Where the Park Service determines at a hearing on the basis of the evidence and testimony presented that the claimant is entitled to the reimbursement sought for actual reasonable moving and related expenses under § 202(a)(1) of the Act, with respect to certain personal property, and agrees to pay such amount to the claimant, a withdrawal of the claimant's appeal as to such expenses will be accepted and the decision appealed from will be modified to that extent.

A claim for reimbursement of costs of maintaining and protecting real property prior to the Government's acquisition of it is properly denied on the basis that the Act does not provide for payment of such costs.

A loss of business claim is properly denied where the business had been discontinued prior to the Government's initiation of negotiations to purchase the property.

A claim for the allowance of interest on funds received for real property acquired by the United States is properly denied on the basis that the Act does not provide for such interest payments.

Uniform Relocation Assistance Appeal of Mr. William B. Allison, Executor of the Estate of Amie B. Allison (Deceased), 4 OHA 117 (Feb. 13, 1981)

Where appellants are required to move from public lands along the Lower Colorado River as a result of termination and nonrenewal of permits previously issued to them for residential use of the lands, they are not displaced persons within the meaning of the Act and they are not eligible to receive relocation assistance benefits under the Act.

Uniform Relocation Assistance Appeals of Mr. & Mrs. Adron J. Chastain et al., 4 OHA 166 (June 8, 1981)

A claim for the allowance of interest on funds received for relocation assistance benefits is properly denied on the basis that the Act does not provide for such interest payment.

Uniform Relocation Assistance Appeal of Mr. Richard E. Weeks, 4 OHA 196 (Oct. 13, 1981)

UNIFORM REAL PROPERTY ACQUISITION POLICY

Generally

Payments and benefits provided by Title II of the Act are made administratively in accordance with regulations and procedures established under provisions of the Act and are transactions separate and apart from land purchase contracts involving negotiations and agreement between the parties; accordingly, the amounts payable for relocation assistance benefits and for property acquisitions are not affected one by the other.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Duval Evans, 4 OHA 107 (Jan. 23, 1981)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM REAL PROPERTY ACQUISITION POLICY--Continued

Expenses Incidental to Transfer of Title to the United States

Where funds for real property taxes have been withheld from the condemnation award and placed in escrow pending further hearing and order of the Court, a determination by the Land Acquisition Officer on eligibility of the condemnees for reimbursement of real property taxes allocable to the period of the calendar year remaining after vesting of title to the lands in the United States will be vacated and the case will be remanded for a new determination after final judgment in the matter by the Court.

Uniform Relocation Assistance Appeal of George Johnson, Jessie Johnson Pickers, Reinhold R. Johnson and Howard W. Johnson, 4 OHA 153 (Apr. 13, 1981)

Expenses incidental to transfer of title to the United States, reimbursable under § 303(l) of the Act and implementing regulations, do not include costs for legal services involved in the preparation and obtainment of documents for recordation.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James Cardillo, 4 OHA 177 (July 14, 1981)

Expenses incidental to transfer of title to the United States, reimbursable under § 303 of the Act, and implementing regulations, do not include increased interest costs on loan affecting mortgaged property not conveyed to the United States, costs for legal services involved in preparation and obtainment of documents for recordation, and miscellaneous personal expense items such as travel time and salary loss in trips to property to meet with appraisers, lender and attorneys, mileage, telephone calls, postage, etc.

Uniform Relocation Assistance Appeal of Mr. and Mrs. John A. Brois, 4 OHA 208 (Nov. 12, 1981)

UNIFORM RELOCATION ASSISTANCE

Generally

A request for relocation assistance benefits, filed approximately 5 years after displacement from the Government-acquired property, is properly denied as untimely under Departmental regulation § 114-50.107-1.

Uniform Relocation Assistance Appeal of BJC/Knowles Architects Associates, 4 OHA 189 (Aug. 6, 1981)

Where the claimant leased and began occupancy of the subject property after its acquisition by the Government had been completed, and subsequently claimant moved from the property when the validity of its lease was questioned, the claimant did not move as a result of the acquisition of the property by the Government, and accordingly is not eligible for benefits under Title II of the Act and Departmental regulations.

Uniform Relocation Assistance Appeal of Safford Marine, Inc., 4 OHA 211 (Nov. 24, 1981)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses

Generally

Where the record indicates reimbursement has been allowed for actual reasonable moving and related expenses under § 202(a) of the Act, an additional payment cannot be authorized in the absence of evidence establishing entitlement thereto.

Uniform Relocation Assistance Appeal of Mr. William P. Allison, Executor of the Estate of Amie P. Allison (Deceased), 4 OHA 117 (Feb. 13, 1981)

Where the claimants have failed to establish entitlement to reimbursement for actual reasonable moving and related expenses in an amount greater than that authorized by the Park Service in the decision appealed from, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Mr. Lawson Little, 4 OHA 156 (Apr. 17, 1981)

Where the record on appeal establishes the claimant's entitlement to payment in an amount larger than that determined by the Park Service to be authorized under § 202 of the Act in lieu of actual reasonable expenses that would have been required to relocate an outdoor advertising sign structure from Government-acquired real property, the determination of the Park Service will be modified and the larger amount of benefits claimed will be allowed.

Uniform Relocation Assistance Appeal of Mr. Richard M. Meeks, 4 OHA 173 (July 13, 1981)

Reimbursement will be allowed to the displaced homeowner for the estimated reasonable cost of fuel oil left in the acquired dwelling where the record shows such oil was purchased by the homeowner one week before she moved from the acquired property and she was assured by Park Service personnel at that time that the cost would be reimbursable because the Park Service would use the oil in its intended use of the acquired dwelling.

Uniform Relocation Assistance Appeal of Mrs. Josephine Erickson, 4 OHA 184 (July 30, 1981)

Payments in Lieu of Moving and Related Expenses

Fixed Payment(s)

Taking of Business Operation

Where the claimants fail to establish entitlement to more than the minimum fixed payment allowed by the Park Service pursuant to § 202(c) of the Act for displacement from a business, in lieu of actual reasonable moving and related expenses under § 202(a) of the Act, the Park Service determination will be affirmed.

Uniform Relocation Assistance Appeal of Mr. and Mrs. W. E. Wilson, 4 OHA 192 (Aug. 20, 1981)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Payments in Lieu of Moving and Related Expenses

Where a claimant elects to receive a moving expense allowance and a dislocation allowance under § 202(b) of the Act, in lieu of payments authorized by § 202(a) of the Act, an additional claim under § 202(a) of the Act for reimbursement of certain actual moving and related expenses is properly disallowed.

Uniform Relocation Assistance Appeal of Mr. Donald J. Daleske, 4 OHA 101 (Jan. 8, 1981)

Replacement Housing Payment for Homeowners

Generally

Where the record shows the Park Service allowed less than the proper amount for replacement housing differential costs under § 203 of the Act, as a result of utilizing in its computation of such benefits only 95% rather than 100% of the list price of the dwelling found by the Park Service, after a housing survey and analysis, to be the most comparable replacement dwelling available at the time of the claimants' displacement from the acquired dwelling, the Park Service determination will be modified to increase the allowable housing differential costs as indicated to be proper.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Duval Evans, 4 OHA 107 (Jan. 23, 1981)

Where the record shows the claimant has received the allowable payment for replacement housing differential costs and incidental expenses under § 203 of the Act, an additional claim for reimbursement of expenses for repairs to the replacement dwelling, incurred 16 months after the claimant moved from the acquired property, is properly denied.

Uniform Relocation Assistance Appeal of Mrs. Jean Holecek, 4 OHA 123 (Feb. 20, 1981)

For purposes of a replacement housing payment, the term "dwelling" includes both improvements and a homesite.

Uniform Relocation Assistance Appeal of Robert O. and Joanne M. Lang, 4 OHA 131 (Mar. 12, 1981)

Where the record shows that the replacement housing differential payment authorized by the Park Service represents an amount which, when added to the acquisition cost of the dwelling acquired, meets the reasonable cost of a comparable replacement dwelling which is decent, safe and sanitary, adequate to accommodate the displaced persons, reasonably accessible to public services and places of employment, available on the private market, and otherwise in compliance with regulatory standards of the Department, the Park Service determination will be affirmed.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Franklin D. Sneed, 4 OHA 143 (Apr. 9, 1981)

Uniform Relocation Assistance Appeal of Mr. and Mrs. Marvin Sherman, 4 OHA 199 (Oct. 22, 1981)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

Displaced homeowners who purchased a replacement dwelling after expiration of the one-year period provided in § 203(a)(2) of the Act, are properly held to be ineligible for homeowners' replacement housing payment benefits.

The amounts payable for property acquisitions and for relocation assistance benefits are separate and distinct entitlements, and there is no authority in the Act for increasing the amount paid for the acquired property to make up for the displaced persons' ineligibility for homeowners' replacement housing payment benefits.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Jesse W. Angle, 4 OHA 160 (Apr. 29, 1981)

Where the record shows the claimant has received the allowable payment for replacement housing differential costs and incidental expenses under § 203 of the Act, an additional claim for reimbursement of expenses for certain repairs and improvements to the replacement dwelling cannot be authorized.

Uniform Relocation Assistance Appeal of Mrs. Josephine Erickson, 4 OHA 184 (July 30, 1981)

Replacement Housing Payment for Tenants and Certain Others

Where the evidence of record shows the average monthly reasonable cost for renting comparable replacement housing, computed under the schedule method, is \$41 more than the average monthly rent paid for the residence from which the claimant moved, a rental replacement housing differential payment of \$1,968, representing the additional rental costs for a period of 4 years, is proper under § 204(1) of the Act and the Department's regulations.

Uniform Relocation Assistance Appeal of Mr. Donald J. Daleske, 4 OHA 101 (Jan. 8, 1981)

WATER AND WATER RIGHTS

FEDERAL APPROPRIATION

Neither FLPMA nor the Taylor Grazing Act authorizes appropriation of water or provide an independent statutory basis for claims for water uses inconsistent in any way with the substantive requirements of state law.

The United States should comply with the substantive and procedural provisions of state law when acquiring and appropriating water except (1) where Congress or the Executive has reserved land or water for particular Federal purposes; (2) where Congress has clearly mandated that unappropriated water on the public lands is reasonably required for a Federal program or purpose and that water cannot be acquired in a manner conforming to all substantive requirements of state law; (3) the United States is entitled to a priority date as of its historic date of first use where water has been used historically for consumptive beneficial uses recognized by state law but without having

WATER AND WATER RIGHTS--Continued

FEDERAL APPROPRIATION--Continued

conformed to procedural requirements prescribed by state law.

Supplement to Solicitor Opinion No. M-36914, on Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (Supp.) (Jan. 16, 1981)

88 I.D. 253

The National Park Service, Fish and Wildlife Service, Bureau of Land Management and Bureau of Reclamation must follow state substantive and procedural law when appropriating water except in the limited instances where water is necessary to accomplish the original purpose(s) of a Federal reservation or protect the navigation servitude.

Nonreserved Water Rights - United States Compliance With State Law, M-36914 (Supp. I) (Sept. 11, 1981)

88 I.D. 1055

STATE LAWS

The United States should comply with the substantive and procedural provisions of state law when acquiring and appropriating water except (1) where Congress or the Executive has reserved land or water for particular Federal purposes; (2) where Congress has clearly mandated that unappropriated water on the public lands is reasonably required for a Federal program or purpose and that water cannot be acquired in a manner conforming to all substantive requirements of state law; (3) the United States is entitled to a priority date as of its historic date of first use where water has been used historically for consumptive beneficial uses recognized by state law but without having conformed to procedural requirements prescribed by state law.

Supplement to Solicitor Opinion No. M-36914, on Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (Supp.) (Jan. 16, 1981)

88 I.D. 253

The National Park Service, Fish and Wildlife Service, Bureau of Land Management and Bureau of Reclamation must follow state substantive and procedural law when appropriating water except in the limited instances where water is necessary to accomplish the original purpose(s) of a Federal reservation or protect the navigation servitude.

Nonreserved Water Rights - United States Compliance With State Law, M-36914 (Supp. I) (Sept. 11, 1981)

88 I.D. 1055

WILD AND SCENIC RIVERS ACT

Sec. 9 of the Wild and Scenic Rivers Act withdraws from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank, or are situated within one-quarter mile of the bank, of any river listed as a potential addition to the Wild and Scenic Rivers System or actually designated as a wild river under the system. Land constituting the bed and banks and within one-quarter mile of the banks of the North Fork of the American River from Cedars to the Auburn Reservoir has been withdrawn from mineral location and entry since Jan. 3, 1975.

Clarence E. Fitzgerald, 55 IBLA 31 (May 28, 1981)

WILD AND SCENIC RIVERS ACT--Continued

The use of the wild section of a river designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968 (Act), 16 U.S.C. § 1271 (1976), for recreational powerboat use is not such an existing right or privilege affecting Federal land so as to be protected by sec. 12(b) of the Act, 16 U.S.C. § 1283(b) (1976). 43 CFR 8351.2-1(a) authorized BLM to issue orders restricting recreational use of powerboats on a wild and scenic river.

Walter S. Haas, Jr., 55 IBLA 283 (June 25, 1981)

WILD FREE-ROAMING HORSES AND BURROS ACT

The Bureau of Land Management may not properly cancel cooperative agreements under the Act of Dec. 15, 1971, as amended, 16 U.S.C. § 1331 (Supp. II 1978), for wild free-roaming horses where there is no evidence that the horses under the agreements were inhumanely treated, only allegations that the assignee inhumanely treated another horse that was in his custody by virtue of a power of attorney under a separate cooperative agreement.

Patrick E. Hammond, 60 IBLA 205 (Nov. 27, 1981)

WILDERNESS ACT

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

Sierra Club, 53 IBLA 159 (Mar. 12, 1981)

Sierra Club, 54 IBLA 31 (Apr. 6, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

Even if a 720-acre nonisland area of public land were considered as exhibiting the wilderness characteristics of size, *i.e.*, of sufficient size as to make practicable its preservation and use in an unimpaired condition, sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), would not require review by the Secretary because such a parcel contains less than 5,000 acres.

Where the Bureau of Land Management's final initial inventory decision states that certain public land is eliminated from wilderness review in that it obviously lacks wilderness characteristics because it is too small to make practicable its preservation and use in an unimpaired condition, that decision will be affirmed in the absence of sufficient reasons to change the result.

Save the Glades Committee, 54 IBLA 215 (Apr. 23, 1981)

WILDERNESS ACT--Continued

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Richard J. Leumont, 54 IBLA 242 (Apr. 27, 1981)
88 I.D. 490

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherry systems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to great deference.

National Outdoor Coalition, 59 IBLA 291 (Oct. 30, 1981)

WILDERNESS ACT--Continued

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Bureau of Land Management's practice of designating an area containing roads or other intrusions as a nonwilderness corridor (cherry system), thereby excluding such area from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful or prohibited practice in fulfilling the inventory phase of the wilderness review program.

C. E. K. Petroleum Co., 59 IBLA 301 (Nov. 3, 1981)

An appellant or intervenor requesting this Board to reverse a Bureau of Land Management decision regarding the inclusion or exclusion of a unit of land as a wilderness study area must show the decision to be based on a clear and specific error of law or fact, otherwise the Board will affirm.

Merrill G. Hastings, 60 IBLA 54 (Nov. 17, 1981)

The Bureau of Land Management may designate an area as a wilderness study area, in accordance with sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), even though it is traversed by a temporary road constructed pursuant to a right-of-way permit granted after the effective date of the Act where BLM has taken actions to ensure that such a grant would not result in permanent impairment of the area for suitability for preservation as wilderness.

California Ass'n of Four-Wheel Drive Clubs, Inc.,
National Outdoor Coalition, 60 IBLA 240 (Dec. 4, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendations as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Under Organic Act Directive No. 78-61, Change 3, July 12, 1979, the effects of the imprints of man which occur outside an inventory unit are generally factors to be considered during the study phase of the wilderness review program. Imprints of man outside the unit may be considered during the inventory stage only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not considered reasonable application of inventory guidelines would be lost.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors

WILDERNESS ACT--Continued

(cherry systems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Jaqueline L. McGarva, Cal-Neva Willow Creek Range Improvement Ass'n, 60 IBLA 278 (Dec. 17, 1981)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

The nonimpairment mandate of sec. 603(c), 43 U.S.C. § 1782(c) (1976), is therefore not applicable to those areas of less than 5,000 acres. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Tri-County Cattlemen's Ass'n, Idaho Cattlemen's Ass'n, 60 IBLA 305 (Dec. 18, 1981)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Conoco, Inc. et al., 61 IBLA 23 (Dec. 29, 1981)

WILDLIFE REFUGES AND PROJECTS

(See also Exchanges of Land, Migratory Bird Conservation Act--if included in this Index.)

GENERALLY

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is

WILDLIFE REFUGES AND PROJECTS--Continued

GENERALLY--Continued

a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Lands acquired for the specific purpose of creating a sanctuary for, and the protection of, wildlife in the vicinity of the Lake Zuhl National Wildlife Refuge fall within that prohibition.

Lee B. Williamson, 54 IBLA 326 (Apr. 30, 1981)

A regulation, 43 CFR 3101.3-3(a) (1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes leasing lands withdrawn for the protection of all species of wildlife within a particular area.

The Secretary of the Interior may, in his discretion, reject any offer to lease Federal lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land has been designated a critical habitat pursuant to sec. 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C.A. § 1536 (West Supp. 1980), and where BLM determines that oil and gas development would result in an unavoidable adverse impact, rejection of a lease offer will be affirmed in the absence of countervailing compelling reasons.

Esdras K. Hartley, Impel Energy Corp., 57 IBLA 319 (Sept. 1, 1981)

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Nugget Oil Corp., 61 IBLA 43 (Dec. 31, 1981)

LEASES AND PERMITS

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Robert H. Covington et al., 55 IBLA 232 (June 22, 1981)
88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

WITHDRAWALS AND RESERVATIONS

GENERALLY

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

Sam McCormack, 52 IBLA 56 (Jan. 6, 1981)

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

A public land order withdrawing land is considered to be valid notice of its contents and becomes effective upon its publication in the Federal Register despite any alleged failure to properly note it on land office records.

Deborah Lowmaster, 52 IBLA 198 (Jan. 26, 1981)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal confers no rights on the locator and is properly declared null and void ab initio.

Allen L. Brannon, Sr., 53 IBLA 251 (Mar. 19, 1981)

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined both as of the date of the withdrawal and the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Stuart Grant Ramstad, 55 IBLA 223 (June 18, 1981)

It is proper to reject an application for conveyance of Government-owned lands for airport development under 49 U.S.C. § 1723 (1976), where the land has been withdrawn for military purposes, is currently used as an Army air field, and where Army officials object to the conveyance.

State of Alaska, 61 IBLA 68 (Dec. 31, 1981)

AUTHORITY TO MAKE

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by the Pickett Act, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by the terms of 43 U.S.C. § 142 (1970) which provided that withdrawn lands shall remain open to location for metalliferous minerals.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.L. 31

Where an executive order issued subsequent to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970), does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981)

EFFECT OF

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by the Pickett Act, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by the terms of 43 U.S.C. § 142 (1970) which provided that withdrawn lands shall remain open to location for metalliferous minerals.

A mining claim located on land which was segregated and closed to mineral entry is properly declared null and void ab initio.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.F. 31

An application to make homestead entry on land previously classified for selection by the State of Alaska is properly rejected.

Deborah Lowmaster, 52 IBLA 198 (Jan. 26, 1981)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

In general, unless the Mineral Leasing Act or a withdrawal or reservation specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the Mineral Leasing Act, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved.

Chevron U.S.A., Inc., 52 IBLA 278 (Feb. 6, 1981)

Portions of mining claims located on lands on which the minerals have been withdrawn from mineral entry are properly declared null and void ab initio; however, where the case record does not support a finding that all the claims in issue are partially situated on such land, the case will be remanded for readjudication.

Harl and Jewell Rightmire, 53 IBLA 125 (Mar. 5, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates the lands from all subsequent appropriation, including location under the mining laws; however, the application to select has no segregative effect when at the time the application is filed, the land is withdrawn from all forms of appropriation under the public land laws, including selections by a state.

A millsite located on land withdrawn from all forms of appropriation under the public land laws, including location and entry under the mining laws, except locations for metalliferous minerals, is null and void ab initio because it is not a location for metalliferous minerals under the mining law.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined both as of the date of the withdrawal and the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

Public domain land withdrawn or reserved is presumed to be available for oil and gas leasing unless the withdrawal or reservation specifically provides otherwise.

Esdra K. Hartley, 54 IBLA 38 (Apr. 9, 1981)
88 I.D. 437

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

William C. Reiman, Richard H. Edmonds et al., 54 IBLA 103 (Apr. 15, 1981)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Where an executive order issued subsequent to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970), does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Clarence E. Fitzgerald, 55 IBLA 31 (May 28, 1981)

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

An application for land withdrawn from appropriation under the public land laws is properly rejected and not held pending possible future availability of the land.

An application for land filed but not adjudicated prior to restoration of the land to appropriation under the public land laws under a public land order which expressly provides that all applications filed prior to restoration shall be considered as simultaneously filed as of the date of restoration may be considered as filed as of the date of restoration.

Vaughn K. Leavitt et al., 55 IBLA 59 (May 29, 1981)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Robert L. Covington et al., 55 IBLA 232 (June 22, 1981)
88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws for an Indian reservation is null and void ab initio.

Steve Foster, Elmer Brewster, 56 IBLA 282 (July 28, 1981)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

Richard Thorpe, Anne Thorpe, 59 IBLA 176 (Oct. 26, 1981)

WITHDRAWALS AND RESERVATIONS--ContinuedEFFECT OF--Continued

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn.

William Milton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarman, 59 IBLA 182 (Oct. 27, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands, where the filing is regular on its face, segregates the lands from all subsequent appropriation, including location and entry under the mining laws and a millsite located while the land is so segregated is null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

Mining claims partially located on land withdrawn from such entry are null and void ab initio to the extent of the encroachment, and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry.

Kelly R. Healy, 60 IBLA 115 (Nov. 20, 1981)

POWERSITES

When a Native allotment application has been rejected because the applicant failed to complete 5 years of qualifying use and occupancy prior to the filing of an application for withdrawal for powersite purposes, the case will be remanded for readjudication under sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), unless the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by act of Congress. If the allotment applicant commenced the qualifying use of the land after its withdrawal or classification, the allotment shall be made subject to the right of reentry provided the United States.

William Carlo, Sr. (On Reconsideration), 53 IBLA 168 (Mar. 12, 1981)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

John C. Farrell, 55 IBLA 42 (May 28, 1981)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Larry D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

WITHDRAWALS AND RESERVATIONS--ContinuedRECLAMATION WITHDRAWALS

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

Sam McCormack, 52 IBLA 56 (Jan. 6, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Susan E. Mitchell, 53 IBLA 42 (Feb. 26, 1981)

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of the withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert A. Adams, 57 IBLA 370 (Sept. 8, 1981)

REVOCATION AND RESTORATION

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

WITHDRAWALS AND RESERVATIONS--ContinuedREVOCATION AND RESTORATION--Continued

An application for land withdrawn from appropriation under the public land laws is properly rejected and not held pending possible future availability of the land.

An application for land filed but not adjudicated prior to restoration of the land to appropriation under the public land laws under a public land order which expressly provides that all applications filed prior to restoration shall be considered as simultaneously filed as of the date of restoration may be considered as filed as of the date of restoration.

Vaughn K. Leavitt et al., 55 IBLA 59 (May 29, 1981)

STATE SELECTIONS

An application to make homestead entry on land previously classified for selection by the State of Alaska is properly rejected.

Deborah Lowmaster, 52 IBLA 198 (Jan. 26, 1981)

TEMPORARY WITHDRAWALS

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

WORDS AND PHRASES

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

David Burr et al., 56 IBLA 225 (July 22, 1981)

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim.

William E. Talbott et al., 52 IBLA 12 (Jan. 5, 1981)

WORDS AND PHRASES--Continued

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper Bureau of Land Management office, of such instrument or recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence except microfilm, of an amended instrument which may change or alter the description of the claim. A quit-claim deed is not an acceptable substitute in the absence of a showing that the certificates of location were unavailable.

John J. Vikarcik, George W. Vrabie, 58 IBLA 377 (Oct. 21, 1981)

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under Arizona law, it is the date specified on the notice of location filed with the local recorder's office.

John C. and Theresa K. Buchanan, 52 IBLA 387 (Feb. 19, 1981)

H. Mason Coggin, 54 IBLA 224 (Apr. 27, 1981)

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under California law, it is the date of posting location notice on the claim.

C. B. Shannon, 55 IBLA 312 (June 26, 1981)

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed under sodium leases must be imposed on the "gross value of the sodium compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market even when applied to an intermediate product and without deduction for the cost that would be incurred in producing a refined product.

PMC Corp., 54 IBLA 77 (Apr. 14, 1981)

"Interest." Where there is an agreement giving an individual the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b) (1979).

Harry S. Hills et al., 59 IBLA 241 (Oct. 28, 1981)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Vickie J. Landis, 54 IBLA 25 (Apr. 6, 1981)

WORDS AND PHRASES--Continued

"Interest in an oil and gas lease or offer." Where an oil and gas lease offeror in a written agreement gives another person a security interest in any lease issued pursuant to an offer filed under the agreement to secure only payment of lease rentals advanced by that person, that person does not have an interest in the lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

Harren R. Haas, 57 IBLA 247 (Aug. 28, 1981)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

Ilean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

"Leasing." The word "leasing" in the phrase "no leasing * * * leading to production of oil and gas" in sec. 1003 of the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

Robert H. Covington et al., 55 IBLA 232 (June 22, 1981)
88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

"Mineral." Geothermal steam, as defined in sec. 2(c) of the Geothermal Steam Act of 1970, 30 U.S.C. § 1001(c), is not a "mineral" as the term is used in the mineral leasing laws. Congress generally did not intend the Steam Act to be treated as a "mineral leasing law."

Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981) 88 I.D. 813

"Notation rule." Under the notation rule a mill-site claim, located at a time when the master title plat in the local Bureau of Land Management office shows that the lands embraced by the claim are included in a state selection application, is properly declared null and void ab initio because notation of the state selection application on the official records segregates the land from further appropriation. The rule applies even where the notation was posted in error, or where the segregative use so noted is void, voidable, or has terminated.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

WORDS AND PHRASES--Continued

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

"Right-of-way grant" is defined in the regulations, 43 CFR 2800.0-5(h), as an instrument issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1976). By implementing regulation, 43 CFR 2803.4, the Secretary has limited the applicability of sec. 506 of FLPMA, 43 U.S.C. § 1766 (1976), to "right-of-way grants."

James W. Smith (On Reconsideration), 55 IBLA 390 (June 30, 1981)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

C. E. K. Petroleum Co., 59 IBLA 301 (Nov. 3, 1981)

Conoco, Inc. et al., 61 IBLA 23 (Dec. 29, 1981)

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

"Smallest legal subdivision." Where an oil and gas lease offer is made, the smallest legal subdivision which may be encompassed by the offer is a quarter-quarter section (40 acres), unless the offer is for a lot in a fractional section.

Gary E. Strong, 57 IBLA 306 (Aug. 31, 1981)

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